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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–SC–23–0007]

Raisins Produced From Grapes Grown in California; Temporary Suspension of Continuance Referendum

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: This final rule adopts, without change, an interim final rule implementing a recommendation from the Raisin Administrative Committee (Committee) to temporarily suspend the continuance referendum requirement under the Federal marketing order for California raisins. This final rule continues in effect the temporary suspension to give precedence to the formal rulemaking process and to provide the California raisin industry time to operate under the marketing order, if amended, before the next scheduled continuance referendum.

DATES: Effective January 23, 2024.

FOR FURTHER INFORMATION CONTACT: Christy Pankey, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085 Fax: (202) 720–8938, or Email: Christy.Pankey@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement No. 989 and Marketing Order No. 989, both as amended (7 CFR part 989), hereinafter referred to as the “Order,” and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Raisin Administrative Committee (Committee) locally administers the Order and is comprised of growers and handlers of raisins operating within the production area and a public member. The Committee consists of 47 members, of whom 35 represent producers, 10 represent handlers, one represents the cooperative bargaining association(s), and one is a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec. 608c(15)(A) of the Act, any handler subject to an order may file with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This rule continues in effect the temporary suspension of the continuance referendum requirement under § 989.91(c). On October 20, 2022, the Committee recommended amending the marketing order through formal rulemaking and, in a separate request, recommended the suspension of the continuance referendum scheduled to occur sometime between November 2023 and November 2025. The Committee believes the suspension eliminates any potential confusion among producers who would otherwise be voting in two referenda in a two-year period.

Section 989.91(b) states that the Secretary shall terminate or suspend the operation of any or all provisions of the Order, whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act. Section 989.91(c) specifies the Secretary shall conduct a referendum no less than five crop years and no later than six crop years from November 26, 2018, to ascertain whether continuance of the Order is favored by producers. The requirement also specifies that subsequent referenda be conducted every six crop years thereafter. Under this requirement, the next continuance referendum is scheduled to occur

sometime between November 2023 and November 2025. AMS identified this period as the same period when the formal rulemaking process will occur, which may also include its own referendum. In consideration of the anticipated time necessary to complete the proposed formal rulemaking action and the likelihood of an amendatory referendum being conducted within two years of the scheduled continuance referendum, AMS determined that the continuance referendum requirement should be suspended to minimize confusion among voters. Additionally, AMS determined that conducting a continuance referendum during the same period as the formal rulemaking is expected to occur would not allow the industry time to fully consider the impact of potential amendments to the Order. For these reasons, the continuance referendum requirement does not tend to effectuate the declared policy of the Act for that period of time. Therefore, AMS has determined not to conduct the continuance referendum at the time required by the Order.

Alternatively, AMS considered suspending the continuance referendum until immediately after the conclusion of the formal rulemaking. However, this timing would still result in multiple referenda occurring within the same 2-year period, which may cause voter confusion and prevent producers from having adequate time to evaluate any potential effects of the amendatory process before voting on Order continuance. To address these temporal concerns, AMS determined that the suspension of the continuance referendum requirement should extend until 2029, at which point the original timeframe under the Order as discussed in the preceding paragraph will be resumed. Based on that timetable, the next continuance referendum will be conducted sometime between November 2029 and November 2030 to determine whether California raisin producers sufficiently support continuation of the Order.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS considered the economic impact of this action on small entities. Accordingly, AMS prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses that are subject to such actions so that small businesses will not be unduly or disproportionately burdened by the action. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique

in that they are brought about through group action of essentially small entities acting on their own behalf.

Presently, there are approximately 18 handlers of raisins subject to regulation under the Order and approximately 2,000 raisin producers in the regulated area.

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$4,000,000 (NAICS code 111332, Grape Vineyards). Small agricultural service firms are defined by the SBA as those having annual receipts of less than \$34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Using USDA National Agricultural Statistics Service (NASS) data, the 2021 season average value of utilized production of California processed raisin-type grapes (most of which are dried into raisins) is \$393.649 million. Dividing that figure by 2,000 producers yields an annual average revenue per producer of \$196,825, well below the SBA large farm size of threshold of \$4,000,000. In terms of annual sales of processed raisin-type grapes, the majority of producers may be classified as small entities.

Dividing the \$393.649 million crop value figure by 18 handlers yields an average annual sales per handler estimate of \$21,869,389. This annual average sales figure is measured at the producer-level crop value, and to draw conclusions about the proportion of small handlers, a handler margin estimate is needed.

There is no current publicly available estimate of an average raisin handler margin, but a 1988 economic study of the California raisin industry estimated producer-handler average margins of about 30 percent for bulk raisin shipments and about 60 percent for packaged shipments. Current handler margins are likely somewhat smaller, since the study was completed more than three decades ago, and current bulk handling and packaging technologies are more efficient.

An alternative method to compute an average handler margin for packaged raisins is to compare the NASS season average grower price per ton for processed raisin-type grapes (converted to its dried weight equivalent) with an average price per ton for packaged raisins that USDA paid under its Commodity Procurement Program in recent years (\$1.41 per pound, \$2,820 per ton). The NASS 2021 season average grower price for raisin-type grapes was \$369 per ton. Using a standard conversion factor of 4.62 to convert to a dried-weight equivalent, the price per

ton for raisins is \$1,705 (\$369 * 4.62). A computed handler margin estimate is 65 percent (\$2,820/\$1,705 – 1). Since the Commodity Procurement average price includes shipping cost to recipient locations, the 65 percent margin is moderately overstated.

If a handler had annual raisin sales of exactly \$34 million (the SBA large firm size threshold) that would mean a handler margin of 55 percent above the producer level (\$34,000,000/\$21,869,389).

Since both abovementioned margin estimates for packaged raisin shipments (60 and 65 percent) are close to the 55 percent margin implied by the \$34 million SBA size threshold, it can be concluded that there are raisin handlers with annual sales both above and below the size threshold. It is reasonable to assume that fewer than 9 of the 18 handlers have annual raisin sales well above \$34 million. Therefore, more than 9, a majority of handlers, have raisin sales below \$34 million and may be classified as small entities.

This rule continues in effect the temporary suspension of the continuance referendum requirement under section 989.91(c). The Committee recommended this action to avoid the scheduled referendum period overlapping with the formal rulemaking to amend the Order and any potential confusion it would otherwise cause producers. After considering the Committee's request, AMS determined the scheduled continuance referendum should be suspended while AMS conducts a formal rulemaking to amend the Order and, if effectuated, while the industry operates under such amended Order.

Section 989.91(b) authorizes the Secretary to terminate or suspend the operation of any or all provisions of the Order whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

An interim final rule concerning this action was published in the **Federal Register** on October 16, 2023 (88 FR 71273). AMS provided a 30-day comment period ending November 15, 2023, to give interested persons time to respond to the interim final rule. AMS received one comment in support of the interim final rule. Accordingly, no changes were made to the rule as published.

This final rule continues in effect the temporary suspension of the continuance referendum requirement under § 989.91(c) of the Federal marketing order regulating the handling of raisins produced from grapes grown in California. The next scheduled continuance referendum will be

conducted no earlier than November 26, 2029.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes to those requirements are necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule does not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** of October 16, 2023 (88 FR 71273), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR part 989, which was published at 88 FR 71273 on October 16, 2023, is adopted as a final rule without change.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024-01252 Filed 1-22-24; 8:45 am]

BILLING CODE 3410-02-P

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1022

Fair Credit Reporting; File Disclosure

AGENCY: Consumer Financial Protection Bureau.

ACTION: Advisory opinion.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing this advisory opinion to address certain obligations that consumer reporting agencies have under section 609(a) of the Fair Credit Reporting Act (FCRA). This advisory opinion underscores that, to trigger a consumer reporting agency's file disclosure requirement under FCRA section 609(a), a consumer does not need to use specific language, such as "complete file" or "file." This advisory opinion also highlights the requirements regarding the information that must be disclosed to a consumer under FCRA section 609(a). In addition, this advisory opinion affirms that consumer reporting agencies must disclose to a consumer both the original source and any intermediary or vendor source (or sources) that provide the item of information to the consumer reporting agency under FCRA section 609(a).

DATES: This advisory opinion is effective on January 23, 2024.

FOR FURTHER INFORMATION CONTACT:

Amanda Quester, Alexandra Reimelt, or Ruth Van Veldhuizen, Senior Counsels, Office of Regulations at (202) 435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.¹ Refer to those procedures for more information.

I. Advisory Opinion

A. Background

The FCRA regulates consumer reporting.² Congress enacted the statute "to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy."³ One of the problems with the

credit reporting industry that Congress recognized and sought to remedy with the FCRA was that a consumer "is not always given access to the information in [their] file."⁴ In light of its broad remedial and consumer protection purposes, courts have recognized that the FCRA "must be read in a liberal manner in order to effectuate the congressional intent underlying it."⁵

The FCRA also promotes transparency of the credit reporting system to consumers in many ways, including by generally requiring that consumer reporting agencies disclose to consumers all information in their file upon request. Under section 609(a), a consumer reporting agency must, upon request, clearly and accurately disclose to the consumer "[a]ll information in the consumer's file at the time of the request" and "[t]he sources of the information."⁶ This requirement applies to all consumer reporting agencies.⁷ Consumers are entitled to free file disclosures in many circumstances. For example, each nationwide consumer reporting agency and nationwide specialty consumer reporting agency, including any nationwide tenant screening or employment background screening company, must provide at

inaccurate or arbitrary information in a credit report" and to "prevent an undue invasion of the individual's right of privacy in the collection and dissemination of credit information").

⁴ S. Rep. No. 91-517, at 3 (1969) (noting, as an example of this problem, that "[i]nsurance reporting firms generally do not admit to making a report on an individual and ordinarily will not reveal the contents of their file to [them]. Credit bureaus sometimes build roadblocks in the path of the consumer."). When introducing the bill that would become the FCRA, Senator Proxmire stated that "[m]any credit reporting agencies refuse to show consumers their files possibly out of fear of litigation and partly to protect its information sources." 115 Cong. Rec. 2412 (1969).

⁵ See, e.g., Fed. Trade Comm'n, *40 Years of Experience With the Fair Credit Reporting Act: An FTC Staff Report With Summary of Interpretations*, at 32 (2011); *Cortez v. Trans Union, LLC*, 617 F.3d 688, 706 (3rd Cir. 2010); *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) ("[The FCRA] was crafted to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner. These consumer[-]oriented objectives support a liberal construction of the FCRA" (citations omitted)).

⁶ See 15 U.S.C. 1681g(a). This requirement is subject to several exceptions. For example, consumer reporting agencies are not required to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer. See 15 U.S.C. 1681g(a)(1)(B). The Consumer Credit Reporting Reform Act of 1996 revised FCRA section 609(a) to require that consumers receive all information in the file rather than only the "nature and substance" of the information. Public Law 104-208, 110 Stat. 3009 (1996).

⁷ See 15 U.S.C. 1681a(f) (defining "consumer reporting agency").

¹ 85 FR 77987 (Dec. 3, 2020).

² See 15 U.S.C. 1681-1681x.

³ *Safeco Ins. Co. of Am. v. Barr*, 551 U.S. 47, 52 (2007); see also 15 U.S.C. 1681 (recognizing "a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy"); S. Rep. No. 91-517, at 1 (1969) (noting that purpose of the statute is, in part, to "prevent consumers from being unjustly damaged because of

least one free file disclosure annually.⁸ Consumers also are entitled to free file disclosures in certain other circumstances, such as in connection with adverse action notices and fraud alerts.⁹

The FCRA defines a consumer's "file" as "all of the information on that consumer that is recorded and retained by a consumer reporting agency, regardless of how the information is stored."¹⁰ Consumer reporting agencies possess files on hundreds of millions of Americans. These files typically include information about, among other things, a consumer's credit, criminal, employment, and rental histories. Consumer reporting agencies may obtain this information from multiple sources, including companies that provide information about their direct experiences with consumers and third parties who gather information from courts and other sources of public records.¹¹ Errors by a furnisher or a third-party source can affect a consumer's file at many different consumer reporting agencies.¹² Consumer reporting agencies use the information in consumer files to produce and sell consumer reports,¹³ which creditors, insurers, landlords, employers, and others who have a permissible purpose use to make eligibility and other decisions about consumers. The potential for the vast

quantity of information contained in consumer files to include errors poses significant risks to accuracy, fairness, and consumer privacy in the consumer reporting system.

Section 609(a)'s file disclosure requirements are central to the statute's accuracy, fairness, and privacy purposes. Consumers have a right to see the information consumer reporting agencies keep about them in their files at any time. Absent file disclosure requirements, a consumer may not be able to review their file, determine whether it contains any incomplete or inaccurate information, and, if it does, file a dispute under FCRA sections 611 and 623, and have the information corrected or deleted.¹⁴ Disclosure of the information in a consumer's file upon request is a critical component of the FCRA's carefully calibrated dispute provisions.¹⁵ Moreover, file disclosure also promotes the FCRA's fairness purpose by enabling consumers to identify any negative information in their files that may be used to make credit and other eligibility determinations about them and take steps to improve their credit profiles.¹⁶

Consumers may suffer significant harm when they are unable to obtain all

information in their files upon request. Without access to all information in their file, a consumer often cannot even take the initial steps to dispute inaccurate information in their consumer reports or take well-informed action to improve their credit profile. Disputing inaccurate information on a consumer report and improving one's credit profile, often challenging and time-consuming processes for consumers, are made even more difficult when consumers do not have access to all of the information in their file. For example, if a consumer identifies an error in an item of information in their file, but the consumer reporting agency has only disclosed to the consumer the original source of the information and not also the vendor source that directly provided the information to the consumer reporting agency and from which the error arose, the consumer would not be able to identify the source of the erroneous information and may not be able to correct it.¹⁷

The CFPB is issuing this advisory opinion to highlight certain file disclosure requirements imposed under FCRA section 609(a). First, this advisory opinion underscores that, to trigger a consumer reporting agency's file disclosure requirement under FCRA section 609(a), a consumer does not need to use specific language, such as "complete file" or "file." Next, this advisory opinion highlights the requirements regarding the information that must be disclosed to a consumer under FCRA section 609(a). Finally, this advisory opinion affirms that consumer reporting agencies must disclose to a consumer both the original source and any intermediary or vendor source (or sources) that provide the item of information to the consumer reporting agency under FCRA section 609(a).

B. Coverage

This advisory opinion applies to all "consumer reporting agencies," as that term is defined in FCRA section 603(f).

C. Legal Analysis

1. Requests Under FCRA Section 609(a)

Section 609(a) of the FCRA provides, with certain exceptions, that "[e]very consumer reporting agency shall, upon request . . . clearly and accurately disclose to the consumer, among other things: (1) All information in the consumer's file at the time of the request . . . ; and (2) The sources of the information." Section 610 in turn specifies the conditions and form of

¹⁴ See 15 U.S.C. 1681i.

¹⁵ See, e.g., *Gillespie v. Equifax Info. Servs., LLC*, 484 F.3d 938, 941 (7th Cir. 2007) (stating that "a primary purposes of the statutory scheme provided by the disclosure in § 1681g(a)(1) is to allow consumers to identify inaccurate information in their credit files and correct this information via the grievance procedure established under § 1681i"). In addition, the Bureau has previously emphasized the importance of consumer reporting agencies using disputes to assess furnisher data quality. For example, the Bureau has directed consumer reporting agencies to revise their accuracy procedures to identify and take corrective action regarding data from furnishers whose dispute response behavior indicates the furnisher is not a source of reliable, verifiable information about consumers. See CFPB, *Supervisory Highlights: Issue 24, Summer 2021* (June 2021), https://files.consumerfinance.gov/f/documents/cfpb-supervisory-highlights_issue-24_2021-06.pdf.

¹⁶ The FTC and the CFPB have brought several enforcement actions to address violations of the FCRA's file disclosure requirements. See, e.g., *FTC v. TransUnion Rental Screening Solutions, Inc.*, No. 1:23-cv-2659 (D. Colo. 2023) (alleging that defendant violated FCRA section 609(a) by failing to disclose the sources of information contained in consumers' files in response to consumers' requests); *United States v. HireRight Solutions, Inc.*, No. 112-cv-01313 (D.D.C. 2012) (alleging that defendant violated FCRA section 609(a)(1) by either failing to provide consumers with information in their files or failing to do so upon request); *United States v. First Advantage SafeRent, Inc.*, No. 8:10-cv-0090-PJM (D. Md. 2010) (alleging that defendant violated FCRA section 609(a)(1) by rejecting requests for file disclosure submitted by facsimile and requiring consumers complete and submit a written file disclosure request form through the U.S. mail); *In re MIB, Inc. (d/b/a Medical Information Bureau)*, 101 F.T.C. 415 (1983) (alleging that defendant violated FCRA section 609(a) when it required consumer to sign a release form as a prerequisite for obtaining their file disclosure).

⁸ See 15 U.S.C. 1681j; 12 CFR 1022.136 (centralized source for requesting annual file disclosures from nationwide consumer reporting agencies); 12 CFR 1022.137 (streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies); CFPB, *Bulletin 2012-09* (Nov. 29, 2012) (explaining FCRA's "streamlined process" requirement for consumers to obtain free annual reports from nationwide specialty consumer reporting agencies), <https://www.consumerfinance.gov/compliance/supervisory-guidance/bulletin-fcra-process-requirement-consumers/>.

⁹ See 15 U.S.C. 1681j(b)-(d). In other instances, consumers may be required to pay for a file disclosure, with the fee capped by regulation. A list of consumer reporting companies is available at: <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/consumer-reporting-companies/companies-list/>.

¹⁰ See 15 U.S.C. 1681a(g) (defining "file").
¹¹ CFPB, *Market Snapshot: Background Screening Reports: Criminal background checks in employment 5-6* (Oct. 2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf. See also Nat'l Consumer Law Ctr., *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Business 10-11* (2012), <https://www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf>.

¹² See, e.g., *Clark v. Trans Union LLC*, No. 3:15cv391, 2016 WL 7197391, at *11 (E.D. Va. Dec. 9, 2016) (stating that "the failure to include LexisNexis in the report creates a material risk that LexisNexis could continue to report inaccurate information to others in the future").

¹³ See 15 U.S.C. 1681a(d) (defining "consumer report").

¹⁷ See *Leo v. AppFolio, Inc.*, No. 17-5771 RJB, 2018 WL 623647, at *8 (W.D. Wash. Jan. 30, 2018).

disclosures to consumers. The Bureau is aware that some industry stakeholders have taken the position that consumers must use specific language in order to request file disclosures under section 609(a), such as the term “complete file.”¹⁸ As the Third Circuit recently held, such requirements contravene the FCRA.¹⁹ The CFPB interprets the FCRA to require consumer reporting agencies to provide a file disclosure upon receipt of a “request” from a consumer who provides proper identification even if the consumer does not use the specific term “request,” “file,” “complete file,” or any other specific words in making such a request.

To obtain a file disclosure, the FCRA does not require consumers to use any specific language. Instead, the statute requires consumers to do two things: make a “request” and provide proper identification.²⁰ Once these conditions are satisfied, FCRA section 609(a) states that a consumer reporting agency “shall” provide the file disclosure. The statute’s use of “shall” in this context makes clear that a consumer reporting agency may not add additional conditions as a prerequisite to complying with section 609(a).²¹

The statute does not define the term “request” as used in section 609(a). In construing the term’s meaning, the Bureau is guided by the statute’s broad

remedial purposes.²² As noted above, it is clear that one of Congress’s goals in the FCRA was to facilitate consumers’ access to their own information and, through such access, to promote the accuracy, privacy, and fairness of the consumer reporting system.²³ These goals would be thwarted if a consumer’s right to a file disclosure depended upon the use of specific words—particularly since no such requirement appears in the statute and because consumers are unlikely to know which words any particular consumer reporting agency expects to hear before honoring its file disclosure obligations. As the Third Circuit explained, if the FCRA were read otherwise:

[C]onsumers could only access their files pursuant to [section 609(a)] if they are familiar with the esoteric distinction between “files” and “consumer reports” in the Definitions section of the FCRA. Construing [section 609(a)] in this way would severely limit consumers’ “access to . . . information in [their] file” and frustrate their ability to know when they are “being damaged by an adverse credit report,” or to “correct[] inaccurate information” in their report.²⁴

Thus, to obtain a file disclosure under section 609(a), a consumer need not specifically request “[a]ll information in the consumer’s file” or request a “complete file” or even use the word “file.” For example, a consumer’s request to a consumer reporting agency for a “report” or “credit report” or “consumer report” or “file” or “record,” along with proper identification, trigger a consumer reporting agency’s obligation under section 609(a).

The CFPB’s interpretation of section 609(a)—that consumers do not need to use the words “file” or “complete file” to invoke their right to a file disclosure—is consistent with the way Congress itself refers to section 609(a) requests in parts of the FCRA. Although section 609(a) requires disclosure of all information in the consumer’s “file” (with only limited, specified exceptions), Congress used the term “consumer report” as a short-hand term for the disclosures required by section 609(a) in some sections that refer to consumer requests and consumer-facing materials.²⁵ For example, FCRA section 609(c)(1)(B)(i) requires that the

Summary of Rights provided to consumers include a description of “the right of the consumer to obtain a copy of a consumer report under [FCRA section 609(a)].”²⁶ Similarly, FCRA section 612(a)(1), which requires nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to “make all disclosures pursuant to section [609(a)]” available for free annually, later refers to such file disclosures as “consumer reports” when it refers to a “streamlined process for consumers to request consumer reports under [FCRA section 612(a)(1)(A)].”²⁷

2. Information Required To Be Disclosed Under FCRA Section 609(a)(1)

Section 609(a) of the FCRA generally requires consumer reporting agencies to, upon request, “clearly and accurately” disclose “all information in the consumer’s file at the time of the request.” To meet this standard, a file disclosure must be understandable to the average consumer.²⁸ It must assist a consumer in identifying inaccuracies in their file, exercising their rights to dispute any incomplete or inaccurate information, and knowing when they are being impacted by adverse information in their file.²⁹

Some consumers are experiencing difficulty in obtaining clear, accurate, and complete file disclosures, particularly from background screening companies. As discussed below, in this advisory opinion the Bureau is highlighting that (1) section 609(a)(1) of the FCRA requires that a consumer reporting agency clearly and accurately disclose to a consumer all information in the consumer’s file at the time of the request, including, among other things, all information the consumer reporting agency provided or might provide to a user, and (2) when a consumer reporting agency provides only summarized information to a user, section 609(a)(1) of the FCRA requires that the consumer reporting agency provide the consumer with the information that formed the

¹⁸ See, e.g., Brief of the Chamber of Commerce of the United States as *Amicus Curiae* in Support of Appellees, *Kelly v. RealPage, Inc.*, No. 21–1672 (Aug. 5, 2021), <https://www.chamberlitigation.com/cases/kelly-v-realpage-inc-at-5-28-29> (arguing that to trigger the requirements of FCRA section 609(a) “the request must specifically be for ‘[a]ll information in the consumer’s file,’ meaning the complete file”); Brief of *Amici Curiae* Consumer Data Industry Association and Professional Background Screening Association in Support of Defendants-Appellees and Affirmance, *Kelly v. RealPage, Inc.*, No. 21–1672 (Aug. 5, 2021), <https://www.cdiaonline.org/wp-content/uploads/2021/08/2021-08-05-CDIA-Amicus.pdf> at 7, 14–19.

According to these stakeholders, a request for a “report” would not trigger section 609(a)’s disclosure obligations. These arguments were recently rejected by the Third Circuit. *Kelly v. RealPage, Inc.*, 47 F.4th 202, 219–20 (3rd Cir. Aug. 24, 2022) (“Nothing in the statute’s text, context, purpose, or history indicates that any magic words are required for a consumer to effect a ‘request’ under § 1681g(a) or that a consumer’s request for ‘my consumer report’ is any less effective at triggering the [consumer reporting agency]’s disclosure obligations than a request for ‘my file.’”).

¹⁹ *Kelly v. RealPage, Inc.*, 47 F.4th 202, 221 (3rd Cir. 2022) (“[W]hen read as a whole, the statute is unambiguous in providing that any generalized ‘request’ by a consumer for the [consumer reporting agency]’s information about her triggers the CRA’s disclosure obligation under § 1681g(a).”).

²⁰ 15 U.S.C. 1681g(a), 1681h(a)(1).

²¹ This is consistent with longstanding interpretations from FTC staff. See, e.g., Fed. Trade Comm’n, 40 Years of Experience With the Fair Credit Reporting Act: An FTC Staff Report With Summary of Interpretations, at 75 & n.248, citing 1990 comment 610–2 (2011).

²² See *supra* note 5.

²³ See *supra* notes 3, 4.

²⁴ *Kelly v. RealPage, Inc.*, 47 F.4th 202, 221 (3rd Cir. Aug. 24, 2022); see also *Taylor v. Screening Reports, Inc.*, 294 F.R.D. 680, 684 (N.D. Ga. 2013) (“[A] consumer who requests his ‘report,’ without limitation, is entitled to his entire consumer file.”).

²⁵ Presumably Congress appreciated that “consumer report” is an easy-to-understand term for consumers even if it is somewhat imprecise in describing what must be disclosed under section 609(a).

²⁶ 15 U.S.C. 1681g(c)(1)(B)(i).

²⁷ 15 U.S.C. 1681j(a)(1). The implementation of free file disclosure requirement for nationwide consumer reporting agencies also makes it clear that consumers do not need use the term “file” or “complete file” to invoke their rights under FCRA section 609(a). FCRA section 612(a)(1)(B) requires the nationwide consumer reporting agencies to make free annual section 609(a) disclosures via a “centralized source.” The nationwide consumer reporting agencies do so through the website annualcreditreport.com, which is the only authorized website for obtaining such disclosures and which refers to those disclosures as “credit reports.” 12 CFR 1022.136.

²⁸ See, e.g., *Shaw v. Experian Info. Sols., Inc.*, 891 F.3d 749, 759 (9th Cir. 2018).

²⁹ 15 U.S.C. 1681i(a); 1681s–2.

basis of the summarized information given to the user.

Section 609(a) generally requires a consumer reporting agency to provide a consumer with a file disclosure that, among other things, accurately reflects the information the consumer reporting agency provided or might provide to a user.³⁰ For example, a consumer reporting agency must provide a file disclosure to the consumer that allows the consumer to see criminal history information in the format that users see or will see it, so that the consumer can check for any inaccuracies and exercise their rights to dispute any information that may be inaccurate as presented to users (such as duplicative listings for a single case).

Additionally, there are a number of situations under the FCRA where a consumer reporting agency must provide information that is not or would not be included in a user report when providing a file disclosure under FCRA section 609(a).³¹ One example of such a situation is when only summarized information, such as a credit or risk score, a tenant screening score, or a recommendation is provided to users. The CFPB interprets FCRA section 609(a)(1)'s requirement to disclose to the consumer "all information in the consumer's file at the time of the request" to include information that formed the basis of summarized information that a consumer reporting agency provided to a user. Providing only summarized information to users does not relieve a consumer reporting agency of its obligations under the plain language of section 609(a)(1) to provide to the consumer "all information in the consumer's file at the time of the request."

If a consumer reporting agency disclosed nothing to a consumer when it only provided summarized information to a user, the consumer would be unaware of the records upon which the summarized information was based, undermining the consumer's ability to exercise their right to dispute any incomplete or inaccurate information contained in their file.³² This would also be the case if a consumer reporting agency disclosed to a consumer the summarized information

it provided to a user without also disclosing the underlying information in the file.

The Bureau's interpretations regarding information required to be disclosed under section 609(a)(1) are consistent with the FCRA's purposes. When initially passing the FCRA, Congress stated that "under this bill credit reporting agencies are required to make full disclosure to the consumer of all of the information obtained. The consumer will then be given the opportunity to correct inaccurate or misleading data."³³ The FCRA provides consumers the right to dispute any incomplete or inaccurate information contained in the consumer's file.³⁴ A consumer's ability to exercise this right is damaged if consumer reporting agencies withhold information that they are required to disclose under section 609(a)(1), including information that reveals inaccuracies in reports provided to users or information that forms the basis of summarized information (such as tenant screening scores). Withholding such information would also damage a consumer's ability to know when they are being impacted by adverse information in their file.

3. Sources of Information Under FCRA Section 609(a)(2)

Section 609(a) of the FCRA generally requires consumer reporting agencies to, upon request, disclose all information in the consumer's file at the time of the request and the sources of the information.³⁵ The CFPB is aware that, in response to these consumer requests, some consumer reporting agencies are not disclosing all sources of an item of information in the consumer's file and instead have disclosed only one source of the item of information. For example, some consumer reporting agencies that acquire public record information (e.g., eviction proceeding records) from a vendor are only disclosing to consumers the jurisdiction that was the original source for these records (e.g., the county

court). The Bureau continues to interpret FCRA section 609(a)(2)'s requirement to disclose "the sources of the information" to include both the original source and any intermediary or vendor source (or sources) that provide the item of information from the original source to the consumer reporting agency.

The CFPB's interpretation is based on the plain language of FCRA section 609(a)(2) itself, which refers to "sources" in the plural. The statute does not limit this requirement to "a source" or "the original source" of the information.³⁶ This interpretation is also consistent with the FTC's *40 Years Report*, which states that "CRAs must disclose the sources of information in the consumer's file, except for sources of information acquired solely for use in preparing an investigative consumer report."³⁷

Additionally, and as described in part I.C.1, a consumer does not need to use specific language to trigger a consumer reporting agency's obligations under FCRA section 609(a)(2). As such, consumers do not need to specifically request that consumer reporting agencies identify *all* the sources of the information in their file in order to be entitled to receive such information. This interpretation is consistent with the principle that the FCRA should be construed in light of its broad remedial purpose.³⁸

The Bureau's interpretation also is consistent with the FCRA's purposes. Congress passed the FCRA in part to "prevent consumers from being unjustly

³⁶ Courts have found that all sources of the information must be disclosed to consumers. *See, e.g., Clark v. Trans Union LLC*, No. 3:15cv391, 2016 WL 7197391, at *11 (E.D. Va. Dec. 9, 2016) (stating that "TransUnion's argument that it properly disclosed the 'ultimate sources' of information, but not the supposedly less pertinent LexisNexis disclosure as to how the data was collected, or by whom, does not persuade"); *Dennis v. Trans Union, LLC*, 2014 WL 5325231, at *7 (E.D. Pa. Oct. 20, 2014) (stating that "[a]s the plain language of Section 1681g(a)(2) does not limit 'sources' in any way, the Court will not impose a limitation on the number of sources a CRA could have, and therefore be required to disclose, for a particular piece of information"). *But see Shimon v. Equifax Info. Servs. LLC*, 994 F.3d 88, 93 (2d Cir. 2021) (granting summary judgment to consumer reporting agency because not "objectively unreasonable" to fail to disclose third-party vendor as the source of information).

³⁷ Fed. Trade Comm'n, *40 Years of Experience With the Fair Credit Reporting Act: An FTC Staff Report With Summary of Interpretations*, at 71 (2011). FTC staff published the *40 Years Report*, an updated compilation of past FTC interpretations of the FCRA, to coincide with the transfer of authority to the Bureau. Effective July 21, 2011, the Dodd-Frank Act transferred rulemaking authority related to most of the FCRA to the Bureau, giving the Bureau the primary regulatory and interpretive roles under the FCRA.

³⁸ *See supra* note 5.

³⁰ Note that the requirement in FCRA section 609(a)(1) that consumer reporting agencies disclose "[a]ll information in the consumer's file at the time of the request" is subject to exceptions. For example, section 609(a)(1)(B) does not require consumer reporting agencies to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer. *See* 15 U.S.C. 1681g(a)(1)(B).

³¹ *See, e.g.,* 15 U.S.C. 1681g(a)(2) (requiring disclosure of the sources of the information).

³² 15 U.S.C. 1681i(a).

³³ 115 Cong. Rec. 33408, 33412 (1969). *See also Selvam v. Experian Info. Sols., Inc.*, 651 F. App'x 29, 33 (2d Cir. 2016) ("The purpose of § 1681g . . . is to enable consumers to obtain information in order to dispute any potential inaccuracies in the file so that inaccurate information is not sent to third parties.").

³⁴ 15 U.S.C. 1681i(a).

³⁵ 15 U.S.C. 1681g(a). FCRA section 609(a)(2) requires disclosure of "[t]he sources of the information" but provides that "the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought." 15 U.S.C. 1681g(a)(2).

damaged because of inaccurate or arbitrary information in a credit report.”³⁹ The FCRA achieves this by, among other things, providing consumers the right to obtain, upon request, all information in their file and the sources of that information and the right to dispute any incomplete or inaccurate information. The statutory right provided by FCRA section 609(a)(2) enables consumers to understand the true sources of any incomplete or inaccurate information in their file and helps them to address such errors more effectively.⁴⁰ For example, many consumer reporting agencies, including background screening companies, obtain public records information from vendors. Vendors often provide only distilled versions of these records that do not contain all the information housed by the jurisdiction from which the records originated and sometimes contain mistakes or fail to include the most up-to-date status of the public records. If a consumer reporting agency discloses to a consumer only the original jurisdiction as the source of the information and does not also disclose the vendor, or conversely, if the consumer reporting agency discloses to a consumer only the vendor and does not also disclose the original source of the information, the consumer may not be able to correct any erroneous public records information that could be included in their files at all of the consumer reporting agencies that receive data from the vendor.⁴¹ Interpreting FCRA section 609(a)(2) to allow a consumer reporting agency to disclose to a consumer only a single source of the information, and not all sources of the information, would undermine the FCRA’s purposes by limiting consumers’ ability to understand the sources of the often

highly sensitive information in their file and to address and prevent further dissemination of incomplete or inaccurate data.

In addition to provisions authorizing Federal and State enforcement,⁴² the FCRA contains two provisions relating to civil liability to consumers for noncompliance. Section 617 provides that “any person who is *negligent* in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to” the consumer’s actual damages, and costs and reasonable attorney’s fees.⁴³ Section 616 provides that “any person who *willfully* fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to” actual or statutory damages of up to \$1,000 per violation, such punitive damages as the court allows, and costs and reasonable attorney’s fees.⁴⁴ A violation is willful when it is inconsistent with “authoritative guidance” from a relevant agency.⁴⁵ As with any guidance issued by the CFPB on the FCRA, or predecessor agencies that were responsible for administering the FCRA prior to the CFPB’s creation, consumer reporting agencies risk liability under section 616 if they violate the FCRA in a manner described in this advisory opinion, regardless of whether the consumer reporting agencies were previously liable for willful violations prior to its issuance.

II. Regulatory Matters

This advisory opinion is an interpretive rule issued under the Bureau’s authority to interpret the FCRA, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010,⁴⁶ which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.⁴⁷

The Bureau has determined that this advisory opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring

approval by the Office of Management and Budget under the Paperwork Reduction Act.⁴⁸

Pursuant to the Congressional Review Act,⁴⁹ the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1022

Fair Credit Reporting; Background Screening

AGENCY: Consumer Financial Protection Bureau.

ACTION: Advisory opinion.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing this advisory opinion to affirm that, when preparing consumer reports, a consumer reporting agency that reports public record information is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the Fair Credit Reporting Act (FCRA) if it does not have certain procedures in place. For example, it must have procedures that prevent reporting of information that is duplicative or that has been expunged, sealed, or otherwise legally restricted from public access. This advisory opinion also highlights certain aspects of the reporting period for adverse items under FCRA section 605(a)(5).

DATES: This advisory opinion is effective on January 23, 2024.

FOR FURTHER INFORMATION CONTACT: Seth Caffrey, Amanda Quester, or Ruth Van Veldhuizen, Senior Counsels, Office of Regulations at (202) 435–7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is issuing this advisory opinion

³⁹ S. Rep. No. 91–517, at 1 (1969).

⁴⁰ Courts have recognized the importance of the disclosure of all sources for consumers to dispute inaccuracies and prevent the reoccurrence of inaccuracies. *See, e.g., Clark v. Trans Union LLC*, No. 3:15cv391, 2016 WL 7197391, at *11 (E.D. Va. Dec. 9, 2016) (stating that “the omission of LexisNexis as a source deprived Clark of her congressionally-mandated right to correct the mistake with LexisNexis, or with anyone else to whom LexisNexis also may have disclosed the inaccurate information. Moreover, the failure to include LexisNexis in the report creates a material risk that LexisNexis could continue to report inaccurate information to others in the future.”); *Leo v. AppFolio, Inc.*, No. 17–5771 RJB, 2018 WL 623647, at *8 (W.D. Wash. Jan. 30, 2018) (noting that AppFolio’s failure to properly identify the vendor who provided the data would make it harder for the plaintiff to correct the misreporting).

⁴¹ *See, e.g., Clark v. Trans Union LLC*, No. 3:15cv391, 2016 WL 7197391, at *11 (E.D. Va. Dec. 9, 2016); *Leo v. AppFolio, Inc.*, No. 17–5771 RJB, 2018 WL 623647, at *8 (W.D. Wash. Jan. 30, 2018).

⁴² 15 U.S.C. 1681s.

⁴³ 15 U.S.C. 1681o (emphasis added).

⁴⁴ 15 U.S.C. 1681n (emphasis added); *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57–58 (2007) (construing meaning of “willful”).

⁴⁵ *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 70 (2007); *Fuges v. Sw. Fin. Servs., Ltd.*, 707 F.3d 241, 253 (3d Cir. 2012).

⁴⁶ Pub. L. 111–203, 124 Stat. 1376 (2010).

⁴⁷ 12 U.S.C. 5512(b)(1).

⁴⁸ 44 U.S.C. 3501–3521.

⁴⁹ 5 U.S.C. 801 *et seq.*

through the procedures for its Advisory Opinions Policy.¹ Refer to those procedures for more information.

I. Advisory Opinion

A. Background

The majority of landlords and employers conduct background checks before renting property or hiring employees.² Landlords and employers typically conduct background checks by obtaining consumer reports from consumer reporting agencies.³ Consumer reporting agencies that prepare consumer reports for these purposes are commonly known as background screening companies, and the reports that they prepare are commonly known as background screening reports.⁴

Background screening companies vary in size, the users they serve, the services they provide, and the geographic regions they cover.⁵ The reports they provide sometimes include information about a consumer's credit history, rental history, employment, salary, professional licenses, criminal arrests and convictions, and driving records.⁶ Background screening companies also vary in how they obtain information and prepare reports. Different companies use different identifying information to conduct searches; search different databases, external and internal, to access information; apply different criteria to determine whether a record in a database matches an individual; and employ different procedures for updating information.⁷

In many instances, background screening reports contain inaccurate information about consumers.⁸ For

example, some background screening reports contain information about the wrong consumer, such as when a report shows an eviction record or criminal conviction that belongs to someone else.⁹ Some also contain duplicative information, such as when a report shows the same eviction or criminal conviction twice, giving the impression that the consumer's eviction or criminal history is more extensive than it really is.¹⁰ In addition, some background screening reports omit existing disposition information, such as when an eviction action or criminal charges have been dismissed, giving a misleading picture of a consumer's rental or criminal history.¹¹

Some background screening reports also include arrests, convictions, or other court records that should not be included because they have been expunged or sealed or otherwise legally restricted from public access.¹² Some States and localities have taken steps to make it easier to seal or expunge certain records, including eviction records.¹³

opinion/technology/4227081-faulty-background-checks-are-violating-privacy-and-ruining-lives/ (describing study that concluded that 74 percent of total criminal charges reported on 101 participants' reports did not have matches in official state reports and that a background report erroneously attributed 50 charges to a participant who in fact had only two drug convictions).

⁹ In November 2021, the Bureau issued an advisory opinion highlighting that a consumer reporting agency that prepares consumer reports using name-only matching (*i.e.*, matching information to the particular consumer who is the subject of a consumer report based solely on whether the consumer's first and last names are identical or similar to the names associated with the information) does not use reasonable procedures to assure maximum possible accuracy under FCRA section 607(b). *Fair Credit Reporting: Name-Only Matching Procedures*, 86 FR 62468 (Nov. 10, 2021).

¹⁰ See Nat'l Consumer Law Ctr., *Digital Denials: How Abuse, Bias, and Lack of Transparency in Tenant Screening Harm Renters*, at 37 (Sept. 2023), https://www.nclc.org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf.

¹¹ See *id.* at 38.

¹² See, *e.g.*, *id.* at 5, 31, 35; Consent Order, *In re Gen. Info. Servs., Inc.*, 2015–CFPB–0028 (Oct. 29, 2015), https://files.consumerfinance.gov/f/201510_cfpb_consent_order_general-information-service-inc.pdf; CFPB, Press Release, *CFPB Takes Action Against Two of the Largest Employment Background Screening Report Providers for Serious Inaccuracies* (Oct. 29, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-two-of-the-largest-employment-background-screening-report-providers-for-serious-inaccuracies/>; Consent Order, *United States v. HireRight Sols., Inc.*, 1:12-cv-01313 (D.D.C. Aug. 8, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120808hiredrightstip.pdf>.

¹³ See, *e.g.*, Or. Rev. Stat. sec. 105.163 (allowing sealing of eviction records in certain circumstances, such as when there is a judgment or judgment of dismissal entered in the consumer's favor); DC Code sec. 42–3505.09 (requiring that eviction records be sealed in certain circumstances, such as (1) after 30 days have passed from final resolution if the eviction proceeding does not result in a judgment for possession in favor of the housing provider or

Additionally, public access to certain criminal records maintained by government entities that reflect a disposition other than conviction or that have reached a specified age without active prosecution is legally restricted in certain circumstances.¹⁴ As explained in part C.1 below, the CFPB interprets the FCRA to prohibit background screening companies from including in consumer reports information that would not be publicly available to the user due to these restrictions.

Background screening companies sometimes also include obsolete criminal record information in background screening reports.¹⁵ For example, the CFPB is aware that, when some consumer reporting agencies report criminal cases that have been dismissed, they have used the disposition date to start the seven-year reporting period for records of arrests and other non-conviction criminal record information, rather than the “date of entry” for records of arrest or the date of the criminal charge for other non-conviction criminal record information.¹⁶ As a result, these

(2) three years after the final resolution of the eviction proceeding if the eviction proceeding results in a judgment for possession in favor of the housing provider); Cal. Civ. Proc. Code sec. 1161.2 (requiring certain eviction records to be sealed at filing, and limiting access to those records to a small list of exceptions, unless judgment is entered for the landlord within 60 days of the complaint being filed); see also Margaret C. Love, *Collateral Consequences Res. Ctr., 50-State Comparison: Expungement, Sealing & Other Record Relief* (Oct. 2021), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>.

¹⁴ See, *e.g.*, 28 CFR 20.21(b); 18 Pa. Cons. Stat. sec. 9121(b)(2) (generally restricting State and local police departments from disseminating information regarding the initiation of criminal proceedings to individuals or noncriminal justice agencies when three years have elapsed from the date of arrest, no disposition is indicated in the record, and nothing in the record indicates that proceedings seeking conviction remain pending); 6 Va. Admin. Code 20–120–50.A.1 (generally prohibiting dissemination of criminal history records to noncriminal justice agencies or individuals when one year has elapsed from the date of arrest, no disposition of the charge has been recorded, and no active prosecution of the charge is pending); see also SEARCH, The Nat'l Consortium for Justice Info. and Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information*, at 41 (2005), <https://www.search.org/files/pdf/RNTFCSCJRI.pdf> (“In most States, authorized noncriminal justice requestors receive less than the full record; most often they are provided conviction-only information.”).

¹⁵ The FCRA limits the length of time that certain items of information may appear in a consumer report. 15 U.S.C. 1681c. For example, the FCRA generally prohibits the reporting of “[a]ny . . . adverse item of information . . . which antedates the report by more than seven years.” 15 U.S.C. 1681c(a)(5). This advisory opinion uses the term “obsolete” to refer to information that is older than the applicable FCRA time limit.

¹⁶ See, *e.g.*, *Moran v. The Screening Pros, LLC*, 25 F.4th 722, 724–25 (9th Cir. 2022); *Moran v. The*

¹ 85 FR 77987 (Dec. 3, 2020).

² CFPB, *Bulletin 2021–03: Consumer Reporting of Rental Information* (July 1, 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin2021-03_2021-07.pdf; CFPB, *Market Snapshot: Background Screening Reports*, at 3–4 (Oct. 2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

³ See 15 U.S.C. 1681a(d) (defining “consumer report”); 1681a(f) (defining “consumer reporting agency”).

⁴ See generally CFPB, *Market Snapshot: Background Screening Reports* (Oct. 2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

⁵ See *id.* at 5.

⁶ See *id.* at 2.

⁷ See *id.* at 8.

⁸ See generally Nat'l Consumer Law Ctr., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*, at 3 (Dec. 2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>; Sarah E. Lageson & Robert Stewart, *Faulty Background Checks Are Violating Privacy and Ruining Lives*, *The Hill* (Sept. 28, 2023), <https://thehill.com/>

consumer reporting agencies have included adverse information in consumer reports longer than FCRA section 605(a) permits.

When these types of information appear in background screening reports, the consequences for consumers can be grave. Consumers' rental housing applications may be denied, or they may end up paying more for such housing or be limited to locations or types of rental housing that they would not otherwise have selected, all of which is particularly challenging for consumers in a market characterized by high rents.¹⁷ Consumers' employment applications may be rejected, they may be passed over for promotions or denied security clearances, and they may lose their jobs. Even if none of these things happen, a consumer may spend considerable time and energy, and incur considerable expense, attempting to correct inaccuracies. Consumers often do not see their reports, if at all, until after they are denied, and efforts to correct information with one company may not carry over to the hundreds of other background screening companies or those that sell data to them.

In 1970, Congress enacted the Fair Credit Reporting Act (FCRA) to protect against these types of harms. The FCRA regulates consumer reporting and imposes obligations on consumer reporting agencies, the entities that furnish information to them, and the users of consumer reports.¹⁸ In passing the FCRA, Congress recognized "a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's privacy."¹⁹ Accordingly, Congress designed the FCRA "to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information" and "to prevent an undue invasion of the individual's right of privacy in the collection and

dissemination of credit information."²⁰ A primary purpose of the FCRA is "to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner."²¹ The statute is meant to ensure, among other things, that consumer reporting agencies provide information "in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information."²²

Because of the importance of consumer report accuracy to businesses and consumers, the structure of the FCRA creates interrelated legal standards and requirements to support the goal of accurate credit reporting. Among these is the requirement that, when preparing a consumer report, consumer reporting agencies "shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."²³ This requirement remains as important today as it was when the statute was enacted in 1970, and concerns about the accuracy of information included in consumer reports are long standing.

The CFPB is issuing this advisory opinion to underscore certain obligations that the FCRA imposes when background screening reports are provided and used. First, this advisory opinion highlights that consumer reporting agencies must comply with their FCRA obligation to "follow reasonable procedures to assure maximum possible accuracy" under section 607(b). In particular, a consumer reporting agency that reports public record information is not using reasonable procedures to assure maximum possible accuracy if it does not have reasonable procedures in place to ensure that (1) it does not report information that is duplicative or that has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entities that maintain the records and (2) it includes any existing

disposition information if it reports arrests, criminal charges, eviction proceedings, or other court filings.

Second, consistent with prior cases and guidance discussed below, this advisory opinion highlights that, when consumer reporting agencies include adverse information in consumer reports, the occurrence of the adverse event starts the running of the reporting period for adverse items under FCRA section 605(a)(5), which is not restarted or reopened by the occurrence of subsequent events. Moreover, a non-conviction disposition²⁴ of a criminal charge cannot be reported beyond the seven-year period that begins to run at the time of the charge. Consumer reporting agencies thus must ensure that they do not report adverse information beyond the reporting period in FCRA section 605(a)(5) and must at all times have reasonable procedures in place to prevent reporting of information that is duplicative or legally restricted from public access and to ensure that any existing disposition information is included if court filings are reported.

B. Coverage

This advisory opinion applies to all "consumer reporting agencies," as that term is defined in FCRA section 603(f).

C. Legal Analysis

1. Reasonable Procedures To Assure Maximum Possible Accuracy When Preparing Background Screening Reports

FCRA section 607(b) provides that "[w]hen a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."²⁵ The Bureau has previously indicated that it is not a reasonable procedure to use name-only matching to match information to the consumer who is the subject of the report when preparing a consumer report.²⁶ This advisory opinion highlights the Bureau's interpretation of three other

Screening Pros, LLC, 943 F.3d 1175, 1182 (9th Cir. 2019); Complaint at ¶¶ 19–20, *Bureau of Consumer Fin. Prot. v. Sterling Infosys, Inc.*, No. 1:19-cv-10824 (S.D.N.Y. Nov. 22, 2019), https://files.consumerfinance.gov/f/documents/cfpb_sterling-infosystems-inc_complaint_2019-11.pdf.

¹⁷ See Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation's Housing*, at 1–2, 22 (2023), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf (noting that "renter cost burdens have risen to their highest recorded level, underscoring the worsening affordability challenges facing many renters with lower incomes"); CFPB, *Tenant Background Checks Market* at 5 (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

¹⁸ 15 U.S.C. 1681–1681x.

¹⁹ 15 U.S.C. 1681(a)(4).

²⁰ S. Rep. No. 91–517, at 1 (1969).

²¹ *Guimond v. Trans Union Credit Info.*, 45 F.3d 1329, 1333 (9th Cir. 1995) (citations omitted); see also *Porter v. Talbot Perkins Children's Servs.*, 355 F. Supp. 174, 176 (S.D.N.Y. 1973) (noting that the FCRA was intended "to protect an individual from inaccurate or arbitrary information about himself in a consumer report that is being used as a factor in determining the individual's eligibility for credit, insurance or employment").

²² 15 U.S.C. 1681(b).

²³ 15 U.S.C. 1681e(b).

²⁴ As used in this advisory opinion, non-conviction disposition refers to a dismissal or a similar disposition of criminal charges such as dropped charges or an acquittal.

²⁵ 15 U.S.C. 1681e(b).

²⁶ See, e.g., *Fair Credit Reporting: Name-Only Matching Procedures*, 86 FR 62468 (Nov. 10, 2021); Consent Order at ¶¶ 4–13, *In re Gen. Info. Servs., Inc.*, 2015–CFPB–0028 (Oct. 29, 2015), https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf; Complaint at ¶¶ 5–11, 13–14, *Bureau of Consumer Fin. Prot. v. Sterling Infosys, Inc.*, No. 1:19-cv-10824 (S.D.N.Y. Nov. 22, 2019), https://files.consumerfinance.gov/f/documents/cfpb_sterling-infosystems-inc_complaint_2019-11.pdf.

aspects of section 607(b)'s "reasonable procedures to assure maximum possible accuracy" requirement that relate to background screening information used in consumer reports: (1) preventing duplication of information; (2) including any existing disposition information if arrests, criminal charges, eviction proceedings, or other court filings are reported; and (3) ensuring that information that has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent users from obtaining it directly from the government entity that maintains the records is not included in consumer reports.

To comply with section 607(b) of the FCRA, consumer reporting agencies must have reasonable procedures in place to prevent duplicative information from being reported on consumer reports in order to ensure that reports do not inaccurately suggest that a single event occurred more than once. For example, inclusion of multiple entries for the same criminal conviction or the same eviction can wrongly suggest that a consumer was convicted or evicted more than once. Consumer reporting agencies that obtain information from multiple sources, or from a single source that in turn collects information from multiple sources, must take particular care to identify information that is duplicative to ensure that information is accurately presented in consumer reports. Similarly, when a consumer reporting agency reports multiple stages of the same court proceeding, it must have procedures in place to ensure that information regarding the stages of these court proceedings (such as an arrest followed by a conviction) is presented in a way that makes clear the stages all relate to the same proceeding or case and does not inaccurately suggest that multiple proceedings or cases have occurred. For example, at a minimum, such procedures should require that all information about one court case should be collated and presented together in manner that makes it clear it is a single case.

When arrests, criminal charges, eviction proceedings, or other court filings are reported, consumer reporting agencies must also have reasonable procedures in place to check for any available disposition information and to ensure that such information is included.²⁷ For example, in situations

where charges have been dismissed, it is misleading and inaccurate to report that an individual has been arrested for the charges without also reporting that the charges have been dismissed.²⁸ Similarly, if a bankruptcy has been discharged, it would be misleading and inaccurate to report the bankruptcy filing without also reporting the result. Highlighting the importance of the accuracy requirements in the statute, the CFPB and FTC recently agreed to a stipulated order with TransUnion Rental Screening Solutions, Inc. (TURSS) that requires TURSS to follow written procedures reasonably designed to prevent reporting of court filings (in that case eviction proceeding records) without a final disposition after TURSS repeatedly provided tenant screening reports with eviction proceeding records that did not include available disposition information.²⁹

Similar considerations apply with respect to expunged records, sealed records, and public records that are otherwise legally restricted from public access. Background screening companies are responsible for maintaining procedures that ensure that any inclusion of charges or arrest records in a consumer report complies with the law in the relevant jurisdiction from which the record originates. To "expunge" means to remove from a record or to erase or destroy.³⁰ Expungement removes arrests, convictions, or other matters from a person's public record entirely, as if they had never occurred. Sealing removes items in public records from

eviction and criminal record information included in tenant-screening reports accurately reflected the disposition). Even when disposition information is included, court filings can of course only be reported if doing so complies with the FCRA. As discussed below, consumer reporting agencies must, for example, have procedures in place to ensure that court filings are not reported if the information has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entity that maintains the records.

²⁸ The Bureau notes that such disposition information appears to be available, in the majority of cases, within five years. For example, a 2018 survey of State criminal history information systems showed that in 48 States and the District of Columbia, an average of 64 percent of arrests in State databases in the past five years had final case dispositions reported. Becki R. Goggins & Dennis A. DeBacco, SEARCH, The Nat'l Consortium for Justice Info. and Statistics, *Survey of State Criminal History Information Systems*, 2018 (Nov. 5, 2020), <https://www.ojp.gov/pdffiles1/bjs/grants/255651.pdf>.

²⁹ CFPB, Press Release, *CFPB and FTC Take Actions Against TransUnion for Illegal Rental Background Check and Credit Reporting Practices* (Oct. 12, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-take-actions-against-transunion-illegal-rental-background-check-and-credit-reporting-practices/>.

³⁰ Black's Law Dictionary (11th ed. 2019).

public view. Similarly, applicable law restricts public access to certain criminal records maintained by government entities that reflect a disposition other than conviction or that have reached a specified age without active prosecution when certain conditions are met.³¹ Once a conviction or other matter of public record has been sealed, expunged, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entity that maintains the records, it is misleading and inaccurate to include it as part of the individual's background in a consumer report because there is no longer any public record of the matter.

Consumer reporting agencies that report public record information are not using reasonable procedures to assure maximum possible accuracy if they do not have reasonable procedures in place to prevent the inclusion in consumer reports of information that has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entity that maintains the records. These procedures could include, for example, reporting only newly-gathered information or cross-checking existing data against updated sources so that matters that have been sealed or expunged can be identified and removed. In some instances, consumer reporting agencies may also be able to request lists of expunged matters from the original source and then remove those matters from their databases.³² In addition, under FCRA section 611(a)(5)(C), consumer reporting agencies must maintain reasonable procedures to ensure that information that is deleted from a consumer's file under FCRA section 611(a)(5)(A) because it is inaccurate or incomplete or cannot be verified does not reappear, except in the limited circumstances

³¹ See, e.g., 28 CFR 20.21(b); 18 Pa. Cons. Stat. sec. 9121; 6 Va. Admin. Code 20-120-50.A.1; see also SEARCH, The Nat'l Consortium for Justice Info. and Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information*, at 41 (2005), <https://www.search.org/files/pdf/RNTFCSCJRI.pdf> ("In most States, authorized noncriminal justice requestors receive less than the full record; most often they are provided conviction-only information.")

³² Nat'l Consumer Law Ctr., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*, at 35-36 (Dec. 2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>. The Administrative Office of Pennsylvania Courts regularly produces lists of expunged cases for entities that subscribe to its bulk distribution of criminal case data and contractually requires those entities to use the information to remove expunged cases. *Id.* at 23.

²⁷ See, e.g., Complaint at ¶ 22, *United States v. AppFolio, Inc.*, No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020), https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf (alleging that a tenant screening company failed to follow reasonable procedures to assure that the

specified in FCRA section 611(a)(5)(B). This would include ensuring information does not reappear in situations in which a third-party vendor resupplies information that the consumer reporting agency has already removed.³³

The CFPB and the Federal Trade Commission (FTC) have brought several cases illustrating the aspects of section 607(b) discussed in this advisory opinion.³⁴ For example, the CFPB alleged in one action that an employment background screening company, General Information Services, violated FCRA section 607(b) by, among other things, failing to use reasonable procedures to prevent the inclusion of expunged criminal records in consumer reports.³⁵ Similarly, the FTC alleged that another employment background screening company, HireRight Solutions, failed to take reasonable steps to ensure that the information in its consumer reports was current and reflected updates, such as the expungement of criminal records.³⁶ Because of this, the FTC charged, employers sometimes received information that incorrectly listed criminal convictions on individuals' records. In addition, according to the FTC's complaint, HireRight Solutions failed to follow reasonable procedures to prevent the same criminal offense information from being included in a consumer report multiple times.³⁷ In another action, the FTC alleged that a tenant screening company, AppFolio, failed to follow reasonable procedures

to assure that the eviction and criminal record information included in tenant-screening reports accurately reflected the disposition, offense name, and offense type, and to prevent the inclusion of multiple entries for the same criminal or eviction action in the same report.³⁸

Additionally, the CFPB and the FTC alleged in a recent action that a rental screening company, TURSS, violated the FCRA by failing to follow reasonable procedures to assure maximum possible accuracy of information in background screening reports relied on by landlords and others.³⁹ Specifically, the agencies alleged that TURSS knowingly and recklessly failed to follow reasonable procedures to: (1) prevent the inclusion of multiple entries for the same eviction case in eviction proceeding records, (2) accurately report the case disposition in eviction proceeding records, (3) accurately label data fields in eviction proceeding records, and (4) prevent the inclusion of sealed eviction proceeding records.⁴⁰

2. Seven-Year Period for Reporting Adverse Information

The FCRA restricts a consumer reporting agency from including obsolete information in a consumer report.⁴¹ FCRA section 605(a)(5) generally prohibits the reporting of "[a]ny . . . adverse item of information . . . which antedates the report by more than seven years."⁴²

As the plain language of section 605(a)(5) makes clear, each adverse item of information is subject to its own seven-year reporting period, the timing of which depends on the date of the "adverse item" itself.⁴³ Thus, the reporting period applicable to one adverse item cannot be restarted or reopened by the occurrence of a subsequent event. Once the period applicable to a particular item expires,

that item can no longer be reported. For example, an arrest is subject to a reporting period that ends seven years after the arrest's date of entry, and subsequent events do not restart or reopen the reporting period applicable to the arrest.⁴⁴

Moreover, in the case of a non-conviction disposition of criminal charges, the disposition does not start its own seven-year reporting period.⁴⁵ This interpretation follows from a longstanding principle in the application of section 605(a): a consumer reporting agency "may not furnish a consumer report referencing the existence of adverse information that predates the times set forth" in section 605(a).⁴⁶ In other words, a consumer reporting agency generally cannot provide a consumer report containing information that reveals the existence of an adverse event that antedates the report by more than seven years. Otherwise the FCRA's clear limitations on the reporting of obsolete information would be vulnerable to easy evasion. Because it necessarily would reveal the existence of the charge, a dismissal of a criminal charge or similar disposition such as dropped charges or acquittal generally could not be reported after the seven-year period that begins when the charge occurred.⁴⁷

This interpretation also follows from the structure of section 605(a) and a 1998 amendment to that provision. The contrast between section 605(a)(5) and several other paragraphs of section 605(a), in which Congress prescribed a different rule for specific categories of information, is instructive. For paid tax liens, the reporting period ends seven years "from date of payment";⁴⁸ for

³³ 15 U.S.C. 1681i(a)(5)(C).

³⁴ The Bureau and the FTC have also previously issued guidance on these aspects of section 607(b). See, e.g., CFPB, *Bulletin 2021-03: Consumer Reporting of Rental Information* (July 1, 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information-bulletin-2021-03_2021-07.pdf; Fed. Trade Comm'n, *What Tenant Background Screening Companies Need to Know About the Fair Credit Reporting Act* (Oct. 2016), <https://www.ftc.gov/business-guidance/resources/what-tenant-background-screening-companies-need-know-about-fair-credit-reporting-act>.

³⁵ See Consent Order, *In re Gen. Info. Servs., Inc.*, 2015-CFPB-0028 (Oct. 29, 2015), https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf; CFPB, Press Release, *CFPB Takes Action Against Two of the Largest Employment Background Screening Report Providers for Serious Inaccuracies* (Oct. 29, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-two-of-the-largest-employment-background-screening-report-providers-for-serious-inaccuracies/>.

³⁶ Consent Order, *United States v. HireRight Sols., Inc.*, 1:12-cv-01313 (D.D.C. Aug. 8, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120808hirerightstip.pdf>.

³⁷ Complaint at ¶¶ 13-14, *United States v. HireRight Sols., Inc.*, 1:12-cv-01313 (D.D.C. Aug. 8, 2012), <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120808hirerightcmpt.pdf>.

³⁸ Complaint at ¶ 22, *United States v. AppFolio, Inc.*, No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020), https://www.ftc.gov/system/files/documents/cases/ecf_1_us_v_appfolio_complaint.pdf.

³⁹ Complaint at ¶ 3, *FTC v. TransUnion Rental Screening Solutions, Inc.*, No. 1:23-cv-2659 (D. Colo. Oct. 12, 2023), https://files.consumerfinance.gov/f/documents/cfpb_transunion-rental-screening-solutions-inc-trans-union-llc_complaint_2023-10.pdf.

⁴⁰ *Id.* at ¶¶ 24-53.

⁴¹ 15 U.S.C. 1681c.

⁴² 15 U.S.C. 1681c(a)(5). FCRA section 605(a)(5) excludes from this prohibition records of convictions of crimes. *Id.* In addition, FCRA section 605(b) provides that this prohibition is not applicable in the case of any consumer credit report to be used in connection with certain specified transactions. 15 U.S.C. 1681c(b).

⁴³ *Moran v. The Screening Pros, LLC*, 943 F.3d 1175, 1184 (9th Cir. 2019) ("The statute's use of 'antedates' connects the seven-year window directly to the adverse event itself.").

⁴⁴ While records of conviction of a crime are not subject to the time limits set forth in section 605(a)(5), an arrest underlying a conviction is subject to the reporting period that ends seven years after the arrest's date of entry.

⁴⁵ *Moran*, 943 F.3d at 1184 ("A dismissal indicates that the consumer no longer faces an indictment, an overall positive—but at least neutral—development. A dismissal is only adverse insofar as it discloses the previous adverse event, i.e., the charge.").

⁴⁶ Fed. Trade Comm'n, *40 Years of Experience With the Fair Credit Reporting Act: An FTC Staff Report With Summary of Interpretations*, at 55 (2011); cf. *Moran*, 943 F.3d at 1184 ("Even though non-adverse information is typically not subject to reporting windows, a dismissal is different. A dismissal necessarily references the existence of the adverse event, to which the reporting window still applies.").

⁴⁷ *Moran*, 943 F.3d at 1184 ("A related later event should not trigger or reopen the window, as the adverse event already occurred. To hold otherwise, thereby allowing this information to be reported through disclosure of a dismissal, would circumvent Congress's intent to confine adverse criminal information to a seven-year window.").

⁴⁸ 15 U.S.C. 1681c(a)(3).

bankruptcy cases, the reporting period ends 10 years “from the date of entry of the order for relief or the date of adjudication.”⁴⁹ Unlike these provisions, section 605(a)(5) contains no indication that Congress intended to tie the end of the reporting period to something other than the occurrence of the adverse item. The pre-1998 version of section 605(a) explicitly made “disposition” of a “record[] . . . of indictment” the trigger for the seven-year reporting period; however, a 1998 amendment deleted that provision.⁵⁰ This amendment “significantly altered [the] statute,” indicating clearly that the end of the reporting period under section 605(a)(5) depends on the date of the adverse item itself—not on the date of disposition.⁵¹

In addition to provisions authorizing Federal and State enforcement,⁵² the FCRA contains two provisions relating to civil liability to consumers for noncompliance. Section 617 provides that “any person who is *negligent* in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to” the consumer’s actual damages, and costs and reasonable attorney’s fees.⁵³ Section 616 provides that “any person who *willfully* fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to” actual or statutory damages of up to \$1,000 per violation, such punitive damages as the court allows, and costs and reasonable attorney’s fees.⁵⁴ A violation is willful when it is inconsistent with “authoritative guidance” from a relevant

agency.⁵⁵ As with any guidance issued by the CFPB on the FCRA, or predecessor agencies that were responsible for administering the FCRA prior to the CFPB’s creation, consumer reporting agencies risk liability under section 616 if they violate the FCRA in a manner described in this advisory opinion, regardless of whether the consumer reporting agencies were previously liable for willful violations prior to its issuance.

II. Regulatory Matters

This advisory opinion is an interpretive rule issued under the Bureau’s authority to interpret the FCRA, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010,⁵⁶ which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.⁵⁷

The Bureau has determined that this advisory opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.⁵⁸

Pursuant to the Congressional Review Act,⁵⁹ the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024–00788 Filed 1–22–24; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1498; Project Identifier MCAI–2023–00459–T; Amendment 39–22643; AD 2023–25–16]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A330–800, and A330–900 series airplanes. This AD was prompted by a determination that part of a certain production ground test procedure used to confirm inner fuel tank integrity was not accomplished properly on certain airplanes. This AD requires a fuel tank leak test and, depending on findings, accomplishment of applicable corrective action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 27, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 27, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1498; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.
- For Airbus SAS service information identified in this AD, contact Airbus

⁴⁹ 15 U.S.C. 1681c(a)(1).

⁵⁰ In the original FCRA, “[r]ecords of arrest, indictment, or conviction of crime” were reportable for seven years, starting at the “date of disposition, release, or parole.” 15 U.S.C. 1681c(a)(5) (1996). The 1998 amendment to the FCRA deleted this paragraph. Consumer Reporting Employment Clarification Act, Public Law 105–347, sec. 5(2), 112 Stat. 3211. The amendment moved “records of arrest” to pre-existing paragraph (a)(2), which now requires the reporting of “[c]ivil suits, civil judgment, and records of arrest” to end seven years after “date of entry,” 15 U.S.C. 1681c(a)(2). See Public Law 105–347, sec. 5(1), 112 Stat. 3211. (Information of this type can be reported “until the governing statute of limitations has expired,” if that period is longer. 15 U.S.C. 1681c(a)(2).) The 1998 amendment also removed criminal convictions altogether from the restriction on reporting obsolete information. *Id.*, sec. 5(3), codified at 15 U.S.C. 1681c(a)(5) (prohibiting reporting, past seven years, of “any other adverse item of information, other than records of convictions of crimes”).

⁵¹ *Moran*, 943 F.3d at 1185.

⁵² 15 U.S.C. 1681s.

⁵³ 15 U.S.C. 1681o (emphasis added).

⁵⁴ 15 U.S.C. 1681n (emphasis added); *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57–58 (2007) (construing meaning of “willful”).

⁵⁵ *Safeco Ins.*, 551 U.S. at 70; *Fuges v. Sw. Fin. Servs., Ltd.*, 707 F.3d 241, 253 (3d Cir. 2012).

⁵⁶ Public Law 111–203, 124 Stat. 1376 (2010).

⁵⁷ 12 U.S.C. 5512(b)(1).

⁵⁸ 44 U.S.C. 3501–3521.

⁵⁹ 5 U.S.C. 801 *et seq.*

SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; website airbus.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 in the AD docket at regulations.gov under Docket No. FAA–2023–1498.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3229; email: Vladimir.Ulyanov@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A330–800, and A330–900 series airplanes. The NPRM published in the **Federal Register** on July 20, 2023 (88 FR 46699). The NPRM was prompted by AD 2023–0052, dated March 14, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0052) (also referred to as the MCAI). The MCAI states that a determination has been made that the differential pressure test across Rib 3, part of the production ground test procedure used to confirm inner fuel tank integrity, was not properly accomplished on airplanes delivered before July 2021.

In the NPRM, the FAA proposed to require a fuel tank leak test and, depending on findings, accomplishment of applicable corrective action, as specified in EASA AD 2023–0052. The

FAA is issuing this AD to address lack of inner fuel tank integrity that, in the case of an uncontained engine rotor failure and subsequent fuel tank puncture, could lead to insufficient fuel available to ensure continued safe flight and landing.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–1498.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International, who supported the NPRM without change.

The FAA received an additional comment from Delta Air Lines (DAL). The following presents the comment received on the NPRM and the FAA's response.

Request To Correct Service Bulletin Errors

DAL requested that two discrepancies in the service information be corrected. DAL noted that the reference to “R(L) INNER TK” should be changed to “L(R) INNER TK,” and there is a discrepancy in the range of possible capacitance values for inner tank probe 6. DAL asserted that these errors make it impossible for the required actions to be accomplished.

The FAA agrees. Paragraph (h)(4) has been added to this AD to change the reference to “L(R) INNER TK.” Paragraph (h)(5) has been added to this AD to remove the requirement to measure the capacitance values for inner tank probe 6 FIN 24QT1 (FIN 24QT2). Airbus has advised that these errors will be corrected in a future revision.

Conclusion

This product has been approved by the aviation authority of another

country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 14 CFR Part 51

EASA AD 2023–0052 specifies procedures for performing a leak test of the inner fuel tanks for discrepancies (*i.e.*, leaks; a leak test is failed if, during a secondary recording of capacitance values, the aft inner tank probe FIN 25QT1 (FIN 25QT2) and FIN 123QT1 (FIN 123QT2) values reduce by 2pF when compared with those in the initial recording) and, depending on findings, accomplishing applicable corrective action. Corrective actions include performing the applicable fault isolation and rectification.

Airbus Service Bulletin A330–28–3141, dated December 16, 2022, specifies serial numbers of affected airplanes.

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.

Costs of Compliance

The FAA estimates that this AD affects 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × \$85 per hour = \$340	\$0	\$340	\$43,520

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

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,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–25–16 Airbus SAS: Amendment 39–22643; Docket No. FAA–2023–1498; Project Identifier MCAI–2023–00459–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 27, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS airplanes, certificated in any category, specified in paragraphs (c)(1) through (5) of this AD, and with serial numbers identified in Airbus Service Bulletin A330–28–3141, dated December 16, 2022.

- (1) Model A330–201, –202, –203, –223, and –243 airplanes.
- (2) Model A330–223F and –243F airplanes.
- (3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.
- (4) Model A330–841 airplanes.
- (5) Model A330–941 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that the differential pressure test across Rib 3, part of the production ground test procedure used to confirm inner fuel tank integrity, had not been properly accomplished on airplanes delivered before July 2021. The FAA is issuing this AD to address lack of inner fuel tank integrity that, in the case of an uncontained engine rotor failure and subsequent fuel tank puncture, could lead to insufficient fuel available to ensure continued safe flight and landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0052, dated March 14, 2023 (EASA AD 2023–0052).

(h) Exceptions to EASA AD 2023–0052

(1) Where EASA AD 2023–0052 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the “Remarks” section of EASA AD 2023–0052.

(3) Where the service information referenced in EASA AD 2023–0052 specifies repeating a step and recording certain values, replace the text “Do step 1 b again and record the capacitance values and then every 10 minutes for 60 min,” with “Repeat step 1 b and record the capacitance values every 10 minutes for 60 minutes.”

(4) Where the service information referenced in EASA AD 2023–0052 specifies “Set the R(L) INNER TK (FIN 6QU1)(FIN 6QU2) switch to OPEN,” this AD requires replacing that text with “Set the L(R) INNER TK (FIN 6QU1)(FIN 6QU2) switch to OPEN.”

(5) Where the service information referenced in EASA AD 2023–0052 specifies measuring certain capacitance values, this AD does not require measuring the capacitance values for inner tank probe 6 FIN 24QT1 (FIN 24QT2).

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0052 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly

to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3229; email: Vladimir.Ulyanov@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A330–28–3141, dated December 16, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2023–0052, dated March 14, 2023.

(3) For EASA AD 2023–0052, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; website airbus.com.

(5) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(6) You may view this service information 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 December 18, 2023.

Victor Wicklund,

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

[FR Doc. 2024–01169 Filed 1–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1890; Project Identifier MCAI–2023–00283–T; Amendment 39–22645; AD 2023–26–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by reports from the supplier that some overheat detection sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill, which can result in an inability to detect hot bleed air leaks. This AD requires revising the existing airplane flight manual (AFM) to include procedures to prevent takeoff with an active bleed air leak annunciated while on the ground. This AD also requires testing the overheat detection sensing elements, marking each serviceable sensing element with a witness mark, and replacing each non-serviceable part with a serviceable part. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 27, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 27, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–1890; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information

(MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Bombardier service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email ac.yul@aero.bombardier.com; website bombardier.com.

- For Liebherr-Aerospace Toulouse SAS service information identified in this AD, contact Liebherr-Aerospace Toulouse SAS, 408, Avenue des Etats-Unis—B.P.52010, 31016 Toulouse Cedex, France; telephone +33 (0)5.61.35.28.28; fax +33 (0)5.61.35.29.29; email techpub.toulouse@liebherr.com; website liebherr.aero.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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–2023–1890.

FOR FURTHER INFORMATION CONTACT:

Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Bombardier, Inc., Model BD–100–1A10 airplanes. The NPRM published in the **Federal Register** on September 29, 2023 (88 FR 67118). The NPRM was prompted by AD CF–2023–09, dated February 14, 2023, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that Bombardier received reports from the supplier of the overheat detection sensing elements of a manufacturing quality escape. Some of the sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill. This condition can result in an inability to detect hot bleed air leaks, which can cause damage to surrounding structures and systems and prevent continued safe flight and landing.

In the NPRM, the FAA proposed to require revising the existing AFM to include procedures to prevent takeoff with an active bleed air leak annunciated while on the ground. The FAA also proposed to require testing the overheat detection sensing elements, marking each serviceable sensing element with a witness mark, and replacing each non-serviceable part with a serviceable part. The FAA also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–1890.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from an anonymous commenter who has experience troubleshooting and maintaining environmental control systems (bleed air). No changes to the AD were requested. The commenter stated revising the AFM procedures will prevent costly maintenance and implementing extra safety features will also be cost effective and favor pilot safety. The FAA infers that the commenter supports the AD.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 14 CFR Part 51

The FAA reviewed Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022, which specifies part numbers for affected sensing elements.

Bombardier has issued the following service information. This service information describes procedures to prevent the takeoff of an airplane with an active bleed air leak annunciated while on the ground. These documents are distinct since they apply to different airplane models.

- Section 05–42, Air Conditioning & Pressurization, Non-Normal Procedures Section, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 71, dated November 9, 2022. (For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)
- Section 05–42, Air Conditioning & Pressurization, Non-Normal Procedures Section, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM,

Revision 37, dated November 9, 2022. (For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.)

The FAA also reviewed Bombardier Service Bulletin 100–36–10, dated December 23, 2022; and Bombardier Service Bulletin 350–36–003, dated December 23, 2022; which specify procedures for testing each leak detection loop sensing element installed on the airplane, marking each serviceable sensing element with a

witness mark, and replacing each non-serviceable part with a serviceable part. These documents are distinct since they apply to different airplane models.

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

Costs of Compliance

The FAA estimates that this AD affects 317 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 77 work-hours × \$85 per hour = \$6,545	\$0	Up to \$6,545	Up to \$2,074,765.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this AD. The FAA estimates it would take up to 1.5 hours to replace one sensor.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–26–02 Bombardier, Inc.: Amendment 39–22645; Docket No. FAA–2023–1890; Project Identifier MCAI–2023–00283–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 27, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by reports from the supplier that some overheat detection sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill. The FAA is issuing this AD to address non-conforming sensing elements of the bleed air leak detection system. The unsafe condition, if not addressed, could result in an inability to detect hot bleed air leaks and consequent damage to surrounding structures and systems, which could prevent continued safe flight and landing.

(f) Compliance

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

(g) Definitions

(1) For purposes of this AD, an affected part is a sensing element marked with a date code A0448 through A2104 inclusive and having an LTS/Kidde part number specified in Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022, unless that sensing element meets the criteria specified in either paragraph (g)(1)(i) or (ii) of this AD.

(i) The sensing element has been tested as specified in Section 3 of the Accomplishment Instructions of Kidde Aerospace and Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, or earlier revisions, and has been found to be serviceable; and the sensing element has been marked on one face of its connector hex nut and packaged as specified in Section 3.C. of the Accomplishment Instructions of Kidde Aerospace and Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, or earlier revisions.

(ii) The sensing element has been tested and found to be serviceable as specified in paragraph (i) of this AD; and the sensing element has been marked on one face of one connector hex nut with one green mark, as specified in Figure 11 of Bombardier Service Bulletin 100–36–10, dated December 23, 2022, or Bombardier Service Bulletin 350–36–003, dated December 23, 2022, as applicable (the figure is representative for all sensing elements).

(2) For purposes of this AD, a serviceable part is a sensing element that is not an affected part.

(h) Revision of the Existing Airplane Flight Manual (AFM)

For airplane serial numbers 20001 through 20457 inclusive and 20501 through 20906 inclusive: Within 30 days after the effective date of this AD, revise the existing AFM to include the information specified in paragraphs (h)(1) and (2) of this AD, as applicable.

(1) For airplane serial numbers 20001 through 20457 inclusive: Section 05–42, Air Conditioning & Pressurization, Non-Normal Procedures Section, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 71, dated November 9, 2022.

Note 1 to Paragraph (h)(1): For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(2) For airplane serial numbers 20501 through 20906 inclusive: Section 05–42, Airconditioning & Pressurization, Non-Normal Procedures Section, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 37, dated November 9, 2022.

Note 2 to Paragraph (h)(2): For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(i) Testing of Overheat Detection Sensing Elements

For airplane serial numbers 20001 through 20457 inclusive and 20501 through 20906 inclusive: Within 7,500 flight cycles or 96 months, whichever occurs first, from the effective date of this AD, test the overheat detection sensing elements to determine if they are serviceable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–36–10, dated December 23, 2022; or Bombardier Service Bulletin 350–36–003, dated December 23, 2022, as applicable.

(1) For each sensing element that is serviceable, before further flight, mark the sensing element with a witness mark in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–36–10, dated December 23, 2022; or Bombardier Service Bulletin 350–36–003, dated December 23, 2022; as applicable.

(2) For each sensing element that is not serviceable, before further flight, replace the sensing element with a serviceable part in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–36–10, dated December 23, 2022; or Bombardier Service Bulletin 350–36–003, dated December 23, 2022; as applicable.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install an affected part on any airplane.

(k) No Reporting Requirement

Although Bombardier Service Bulletin 100–36–10, dated December 23, 2022; and Bombardier Service Bulletin 350–36–003, dated December 23, 2022; specify to submit certain information to the manufacturer, this AD does not include that requirement.

(l) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (m)(2) of this AD. Information may be emailed to: 9-AVS-NYACO-COS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Additional Information

(1) Refer to Transport Canada AD CF–2023–09, dated February 14, 2023, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1890.

(2) For more information about this AD, contact Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

(n) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 100–36–10, dated December 23, 2022.

(ii) Bombardier Service Bulletin 350–36–003, dated December 23, 2022.

(iii) Section 05–42, Air Conditioning & Pressurization, Non-Normal Procedures Section, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 71, dated November 9, 2022.

Note 3 to Paragraph (n)(2)(iii): For obtaining the procedures for Bombardier

Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(iv) Section 05–42, Air Conditioning & Pressurization, Non-Normal Procedures Section, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 37, dated November 9, 2022.

Note 4 to Paragraph (n)(2)(iv): For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(v) Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022.

(3) For Bombardier service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email ac.yul@aero.bombardier.com; website [bombardier.com](https://www.bombardier.com).

(4) For Liebherr-Aerospace Toulouse SAS service information identified in this AD, contact Liebherr-Aerospace Toulouse SAS, 408, Avenue des Etats-Unis—B.P.52010, 31016 Toulouse Cedex, France; telephone +33 (0)5.61.35.28.28; fax +33 (0)5.61.35.29.29; email techpub.toulouse@liebherr.com; website [liebherr.aero](https://www.liebherr.aero).

(5) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(6) 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 December 21, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–01170 Filed 1–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1811; Project Identifier MCAI–2023–00146–E; Amendment 39–22654; AD 2024–01–03]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2023–01–

07 for all GE Aviation Czech s.r.o. (GEAC) (type certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Model H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 engines. AD 2023–01–07 required revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) and the operator's existing approved maintenance or inspection program, as applicable, to incorporate updated coefficients and recalculate the cycles accumulated on critical parts. Since the FAA issued AD 2023–01–07, the manufacturer revised the ALS of the EMM to introduce new and more restrictive airworthiness limitations and associated thresholds and intervals for life-limited parts, which prompted this AD action. This AD requires revising the ALS of the existing EMM and the operator's existing approved engine maintenance or inspection program, as applicable, to incorporate new and more restrictive instructions and associated thresholds and intervals for life-limited parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 27, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 27, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1811; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADS@easa.europa.eu*; website: *easa.europa.eu*. You may find this

material on the EASA website at *ad.easa.europa.eu*.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1811.

FOR FURTHER INFORMATION CONTACT:

Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2023–01–07, Amendment 39–22301 (88 FR 2501, January 17, 2023; corrected February 3, 2023 (88 FR 7355); corrected February 16, 2023 (88 FR 10013)) (AD 2023–01–07). AD 2023–01–07 applied to GEAC Model H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 engines. AD 2023–01–07 required revising the ALS of the existing EMM and the operator's existing approved maintenance or inspection program, as applicable, to incorporate the updated coefficients and recalculate the cycles accumulated on critical parts. The FAA issued AD 2023–01–07 to prevent failure of the engine.

The NPRM published in the **Federal Register** on September 6, 2023 (88 FR 60896). The NPRM was prompted by EASA AD 2023–0021, dated January 23, 2023 (EASA AD 2023–0021) (also referred to as the MCAI), issued by EASA, which is Technical Agent for the Member States of the European Union. EASA AD 2023–0021 supersedes EASA AD 2022–0008. The MCAI states that the manufacturer revised the ALS to introduce new and more restrictive instructions and associated thresholds and intervals for life-limited parts. The MCAI also states that GEAC published an Alert Service Bulletin, ASB–H75–72–10–00–0062, ASB–H80–72–10–00–0107, ASB–H85–72–10–00–0051, ASB–M601F–72–10–00–0070, ASB–M601E–72–10–00–0120, ASB–M601D–72–10–00–0087 and ASB–M601Z–72–10–00–0069; Revision 1, dated January 20, 2023, published as a single document,

which provides instructions to determine the accumulated life of certain propeller shafts.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1811.

In the NPRM, the FAA proposed to require accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of the proposed AD.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0021, which specifies procedures for operators to revise the ALS of the existing EMM and the operator's existing approved engine maintenance or inspection program, as applicable, to incorporate new and more restrictive instructions and associated thresholds and intervals for life-limited parts, as applicable to each engine model.

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

Costs of Compliance

The FAA estimates that this AD affects 33 engines installed on 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
Revise the ALS	1 work-hours × \$85 per hour = \$85	\$0	\$85	\$2,805

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2023–01–07, Amendment 39–22301 (88 FR 2501, January 17, 2023; corrected February 3, 2023 (88 FR 7355); corrected February 16, 2023 (88 FR 10013)); and

■ b. Adding the following new airworthiness directive:

2024–01–03 GE Aviation Czech s.r.o. (Type Certificate Previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Amendment 39–22654; Docket No. FAA–2023–1811; Project Identifier MCAI–2023–00146–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 27, 2024.

(b) Affected ADs

This AD replaces AD 2023–01–07, Amendment 39–22301 (88 FR 2501, January 17, 2023; corrected February 3, 2023 (88 FR 7355); corrected February 16, 2023 (88 FR 10013)).

(c) Applicability

This AD applies to GE Aviation Czech s.r.o. (type certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Model H75–100, H75–200, H80, H80–100, H80–200, H85–100, and H85–200 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to introduce new and more restrictive airworthiness limitations and associated thresholds and intervals for life-limited parts. The FAA is issuing this AD to prevent failure of the engine. The unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0021, dated January 23, 2023 (EASA AD 2023–0021).

(2) The action required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Exceptions to EASA AD 2023–0021

(1) Where EASA AD 2023–0021 defines the AMP as "the approved Aircraft Maintenance Programme containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine," for this AD, replace that text with, "the aircraft maintenance program containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated airplane."

(2) Where EASA AD 2023–0021 defines the ALS as "the Airworthiness Limitations Section of GEAC EMM No. 0983402 Revision 25, dated November 21, 2022," for this AD, replace that text with, "the airworthiness limitations section of GEAC EMM No. 0983402 Revision 26, dated February 1, 2023." The ALS in Revision 26 of the EMM is unchanged from Revision 25 of the EMM.

(3) Where EASA AD 2023–0021 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where paragraph (3) of EASA AD 2023–0021 specifies revising "the approved AMP within 12 months after the effective date of EASA AD 2023–0021," replace that text with, "the ALS of the existing approved engine maintenance or inspection program, as applicable, within 90 days after the effective date of this AD."

(5) This AD does not require compliance with paragraphs (1), (2), (4), and (5) of EASA AD 2023–0021.

(6) This AD does not adopt the Remarks paragraph of EASA AD 2023–0021.

(i) Provisions for Alternative Actions and Intervals

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2023–0021.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to ANE-AD-AMOC@faa.gov.

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

(k) Additional Information

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238-7146; email: barbara.caufield@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023-0021, dated January 23, 2023.

(ii) [Reserved]

(3) For EASA AD 2023-0021, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu; website: easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

(5) You may view this material 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 January 17, 2024.

Victor Wicklund,

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

[FR Doc. 2024-01218 Filed 1-22-24; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2023-1647; Project Identifier AD-2023-00487-E; Amendment 39-22650; AD 2023-26-07]

RIN 2120-AA64

Airworthiness Directives; General Electric Company Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) Model GE90-90B, GE90-94B, GE90-110B1, and GE90-115B engines. This AD was prompted by a manufacturer investigation that revealed certain high-pressure turbine (HPT) stage 1 disks, HPT stage 2 disks, forward HPT rotor seals, interstage HPT seals, and stages 7-9 compressor rotor spools were manufactured from powder metal material suspected to contain iron inclusion. This AD requires replacement of affected HPT stage 1 disks, HPT stage 2 disks, forward HPT rotor seals, interstage HPT seals, and stages 7-9 compressor rotor spools. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 27, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 27, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2023-1647; 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 address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552-3272; email: aviation.fleetsupport@ge.com; website: ge.com.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety

Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at regulations.gov under Docket No. FAA-2023-1647.

FOR FURTHER INFORMATION CONTACT:

Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7178; email: Alexei.T.Marqueen@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain GE Model GE90-90B, GE90-94B, GE90-110B1, and GE90-115B engines. The NPRM published in the **Federal Register** on September 5, 2023 (88 FR 60603). The NPRM was prompted by the manufacturer's detection of iron inclusion in a turbine disk manufactured from the same powder metal material used to manufacture certain HPT stage 1 disks, HPT stage 2 disks, forward HPT rotor seals, interstage HPT seals, and stages 7-9 compressor rotor spools for GE90-90B, GE90-94B, GE90-110B1, and GE90-115B engines. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process and may cause reduced material properties and a lower fatigue life capability, which may result in premature fracture and subsequent uncontained failure. The FAA was also informed that GE communicated with affected operators having affected HPT stage 1 and stage 2 disks identified in Table 1 to Paragraph (c) of this AD regarding the corrective action for this unsafe condition. As a result, affected operators are already aware of the corrective action and have already performed the actions required by this AD. Therefore, the FAA has determined that the compliance time to replace these affected HPT stage 1 and stage 2 disks before further flight is appropriate. In the NPRM, the FAA proposed to require replacement of certain HPT stage 1 disks, HPT stage 2 disks, forward HPT rotor seals, interstage HPT seals, and stages 7-9 compressor rotor spools with parts eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive**Comments**

The FAA received comments from five commenters. Commenters included

The Boeing Company (Boeing), Federal Express (FedEx), GE, United Airlines, and an individual commenter. Boeing, United Airlines, and the individual commenter supported the NPRM without change. FedEx and GE requested changes to the proposed AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Reference Additional Service Information

FedEx and GE requested that the FAA add the following service information to the NPRM in a section designated as Other Related Service Information: GE GE90–100 Service Bulletin (SB) 72–0904 R00, dated May 25, 2022; GE GE90–100 SB 72–0911 R01, dated September 21, 2022; and GE GE90 SB 72–1223, dated January 25, 2023. FedEx and GE both noted that Table 1 to Paragraph (c) of the proposed AD listed affected components that were partially copied from those GE SBs, and not including mention of those GE SBs could cause confusion for operators, even though additional GE SBs would not be incorporated by reference.

The FAA agrees and for the ease of the reader, instead of including these additional GE SBs in a section identified as Other Related Service Information in the preamble, has added Note 1 to paragraph (c) of this AD to include the three additional GE SBs identified by the commenters and to clarify that the affected parts can also be found in these additional GE SBs. These additional GE SBs will not be incorporated by reference in this AD.

Request To Update Affected Part Number

GE requested that the FAA update Table 1 to Paragraph (c) of the proposed AD by changing the part number (P/N) for an affected HPT stage 1 disk having serial number (S/N) GWN10NNW from “1865M13G08” to “2445M04G11.” GE noted that the HPT stage 1 disk with S/ NGWN10NNW was repaired and re-marked to P/N 2445M04G11.

The FAA agrees and has updated Table 1 to Paragraph (c) of this AD as requested by GE.

Request To Clarify Language in Background Section

GE requested that the FAA add language to the Background section of the NPRM to clarify that GE communicated with affected operators having affected HPT stage 1 and stage 2 disks identified in Table 1 to Paragraph (c) of the proposed AD regarding the proposed corrective action for the identified unsafe condition. GE noted that the current language in the NPRM does not specify that the affected disks are identified in Table 1 to Paragraph (c) of the proposed AD, and additional HPT stage 2 disks are identified in General Electric GE90–100 Service Bulletin 72–0914, dated January 25, 2023, which could cause a misinterpretation of the required actions on HPT stage 2 disks.

The FAA agrees and has revised the language in the Background section of this final rule accordingly.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD

to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE GE90–100 Service Bulletin (SB) 72–0914, dated January 25, 2023 (GE GE90–100 SB 72–0914); which provides the affected part and serial numbers of the HPT stage 2 disks, forward HPT rotor seals, and stages 7–9 compressor rotor spools; and specifies replacement instructions for the HPT stage 2 disks, forward HPT rotor seals, and stages 7–9 compressor rotor spools. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Interim Action

The FAA considers this AD to be an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Costs of Compliance

The FAA estimates that this AD affects 9 engines installed on airplanes of U.S. registry. The FAA estimates that 0 engines installed on airplanes of U.S. registry require replacement of the interstage HPT seal.

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
Replace HPT stage 2 disk	8 work-hours × \$85 per hour = \$680	\$531,578	\$532,258	\$532,258
Replace stages 7–9 compressor rotor spool ..	8 work-hours × \$85 per hour = \$680	493,588	494,268	1,977,072
Replace forward HPT rotor seal	8 work-hours × \$85 per hour = \$680	25,093	25,773	51,546
Replace interstage HPT seal	8 work-hours × \$85 per hour = \$680	108,256	108,936	0

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–26–07 General Electric Company: Amendment 39–22650; Docket No. FAA–2023–1647; Project Identifier AD–2023–00487–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 27, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) Model GE90–90B and GE90–94B engines with interstage HPT seals listed in Table 1 to Paragraph (c) of this AD and GE90–110B1 and GE90–115B engines with an installed high-pressure turbine (HPT) stage 1 disk, HPT stage 2 disk, forward HPT rotor seal, or stages 7–9 compressor rotor spool part number (P/N) and serial number (S/N) identified in Table 1 to Paragraph (c) of this AD, or identified in Paragraph 4. APPENDIX—A, Tables 1, 2, or 3, of GE GE90–100 Service Bulletin (SB) 72–0914, dated January 25, 2023 (GE90–100 SB 72–0914).

Table 1 to Paragraph (c)—Affected HPT Stage 1 and Stage 2 Disks, and Interstage HPT Seals

Part Name	P/N	S/N
HPT stage 1 disk	1865M13G08	GWN11657
		GWN117GN
		GWN10PGW
		GWN10T0A
		GWN10T0C
		GWN10THW
HPT stage 1 disk	2445M04G11	GWN10TJ0
		GWN10NNW
HPT stage 2 disk	1865M14P04	TMT4RN06
		TMT4RN26
Interstage HPT seal	2453M60P01	NCU61528
		NCU61686
		NCU56200
		NCU61527
		NCU61687

Note 1 to paragraph (c): Part numbers and serial numbers for affected HPT stage 1 disks, HPT stage 2 disks, and interstage HPT seals are also listed in GE GE90–100 Service Bulletin (SB) 72–0904 R00, dated May 25, 2022; GE GE90–100 SB 72–0911 R01, dated September 21, 2022; and GE GE90 SB 72–1223, dated January 25, 2023.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed certain HPT stage 1 disks, HPT stage 2 disks, forward HPT rotor seals, interstage HPT seals, and stages 7–9 compressor rotor spools were manufactured from powder metal material suspected to

contain iron inclusion. The FAA is issuing this AD to prevent premature fracture and subsequent uncontained failure. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

At the applicable times specified in paragraphs (g)(1) through (6) of this AD, remove each affected HPT stage 1 disk, HPT stage 2 disk, forward HPT rotor seal, interstage HPT seal, and stages 7–9 compressor rotor spool from service and replace with a part eligible for installation.

(1) For HPT stage 1 disks, before further flight.

(2) For HPT stage 2 disks with a part number and serial number identified in Paragraph 4. APPENDIX—A, Table 1 of GE90–100 SB 72–0914, at the next piece part exposure or before exceeding 3,500 cycles since new (CSN), whichever occurs first.

(3) For HPT stage 2 disks with a part number and serial number identified in Table 1 to paragraph (c) of this AD, before further flight.

(4) For forward HPT rotor seals with a part number and serial number identified in Paragraph 4. APPENDIX—A, Table 3 of GE90–100 SB 72–0914, at the next piece part exposure or before exceeding 14,200 CSN, whichever occurs first.

(5) For interstage HPT seals, at the next piece part exposure or before exceeding 12,600 CSN, whichever occurs first.

(6) For stages 7–9 compressor rotor spools, at the next piece part exposure or before exceeding the cyclic removal thresholds identified in Paragraph 4. APPENDIX—A, Table 2 of GE90–100 SB 72–0914, whichever occurs first.

(h) Definition

For the purpose of this AD, a “part eligible for installation” is any HPT stage 1 disk, HPT stage 2 disk, stages 7–9 compressor rotor spool, forward HPT rotor seal, or interstage HPT seal with a part number and serial number that is not identified in paragraph (c) of this AD.

(i) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: ANE-AD-AMOC@faa.gov.

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

(j) Additional Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: Alexei.T.Marqueen@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) General Electric GE90–100 Service Bulletin 72–0914, dated January 25, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: aviation.fleetsupport@ge.com; website: ge.com.

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

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

Issued on January 2, 2024.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–01166 Filed 1–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 240117–0016]

RIN 0694–AJ52

Removals From the Unverified List

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

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by removing three persons, including one under the destination of Canada, one under the destination of People’s Republic of China (China), and one under the destination of the United Arab Emirates, from the Unverified List (UVL) because BIS was able to verify their bona fides.

DATES: This rule is effective on January 19, 2024.

FOR FURTHER INFORMATION CONTACT: Kevin J. Kurland, Deputy Assistant Secretary for Export Enforcement, Phone: (202) 482–4255 or by email at UVLRequest@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The UVL, found in supplement no. 6 to part 744 of the EAR (15 CFR parts 730–774), contains the names and addresses of foreign persons who are or have been parties to a transaction, as described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR. These foreign persons are added to the UVL because BIS or federal officials acting on BIS’s behalf were unable to verify their bona fides (*i.e.*, legitimacy and reliability relating to the end-use and end user of items subject to the EAR) through an end-use check. These checks, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside the U.S. Government’s control.

As set forth in the EAR, there are any number of reasons why these checks cannot be completed to the satisfaction of the U.S. Government. Section

744.15(c)(1) of the EAR provides illustrative examples of those circumstances, including reasons unrelated to the cooperation of the foreign party subject to the end-use check. Such examples include: (i) During the conduct of an end-use check, the subject of the check is unable to demonstrate the disposition of items subject to the EAR; (ii) The existence or authenticity of the subject of an end-use check cannot be verified (*e.g.*, the subject of the check cannot be located or contacted); (iii) Lack of cooperation by the host government authority prevents an end-use check from being conducted.

BIS’s inability to confirm the bona fides of foreign persons subject to end-use checks raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-country) of items subject to the EAR; it also indicates a risk that such items may be diverted to prohibited end-uses and/or end-users. Under such circumstances, there may not be sufficient information to add the foreign person at issue to the Entity List under § 744.11 of the EAR. Therefore, BIS may add the foreign person to the UVL.

As provided in § 740.2(a)(17) of the EAR, the use of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL is suspended. Additionally, under § 744.15(b) of the EAR, there is a requirement for exporters, reexporters, and transferors to obtain (and maintain a record of) a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) to such persons, when the exports, reexports and transfers (in-country) are not subject to a license requirement. Finally, pursuant to § 758.1(b)(8), Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for all exports of tangible items subject to the EAR where any party to the transaction, as described in § 748.5(d) through (f), is listed on the UVL.

Requests for the removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of a UVL entry will be made by the Deputy Assistant Secretary for Export Enforcement, based on a demonstration by the listed person of their bona fides.

Removals From the UVL

This final rule removes three persons from the UVL because BIS was able to verify their bona fides. This rule

removes “Skymount Drones” under the destination of Canada, “Plexus (Xiamen) Co., Ltd.,” under the destination of China, and “Delma Industrial Supply & Marine Services” under the destination of the United Arab Emirates. BIS is removing these three persons pursuant to § 744.15(c)(2) of the EAR.

Rulemaking Requirements

Executive Order Requirements

Executive Orders 13563 and 12866 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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been deemed not significant for purposes of Executive Order 12866.

This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person is required to respond to, nor is 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.

The UVL additions contain collections of information approved by OMB under the following control numbers:

- OMB Control Number 0694–0088—Simple Network Application Process and Multipurpose Application Form
- OMB Control Number 0694–0122—Miscellaneous Licensing Responsibilities and Enforcement
- OMB Control Number 0694–0134—Entity List and Unverified List Requests,
- OMB Control Number 0694–0137—License Exemptions and Exclusions.

BIS believes that the overall increases in burdens and costs will be minimal and will fall within the already approved amounts for these existing collections. 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.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to Section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking and opportunity for public participation.

Further, no other law requires notice of proposed rulemaking or opportunity for public comment for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

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 through 774) is amended as follows:

PART 744—END-USE AND END-USER CONTROLS

- 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023).

- 2. Supplement No. 6 to Part 744 is amended:

■ a. Under CANADA by removing the entry for “Skymount Drones,”

■ b. Under CHINA, PEOPLE’S REPUBLIC OF, by removing the entry for “Plexus (Xiamen) Co., Ltd.,” and

■ c. Under UNITED ARAB EMIRATES by removing the entry for “Delma Industrial Supply & Marine Services.”

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2024–01253 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1420

[CPSC Docket No. 2017–0032]

Standard for All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), required the Consumer Product Safety Commission (CPSC or the Commission) to publish, as a mandatory consumer product safety standard, the American National Standard for Four-Wheel All-Terrain Vehicles (ATVs) developed by the Specialty Vehicle Institute of America (ANSI/SVIA 1–2007). CPSC published that mandatory consumer product safety standard in November 2008. In March 2023, ANSI/SVIA issued a 2023 edition of its standard. In accordance with the CPSA, CPSC is issuing this final rule to amend the Commission’s mandatory ATV standard to reference the 2023 edition of the ANSI/SVIA 1 standard.

DATES: This rule is effective on January 1, 2025. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

William Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone: 301–504–7833; email: wcusey@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 42 of the CPSA, as amended by section 232 of the CPSIA, directed the Commission to “publish in the **Federal Register** as a mandatory consumer product safety standard the *American National Standard for Four-Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements* developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA 1–2007).” 15 U.S.C. 2089(a)(1). Accordingly, on November 14, 2008, CPSC published a final rule, codified at 16 CFR part 1420, establishing ANSI/SVIA 1–2007 as a mandatory consumer product safety standard. 73 FR 67385.

Section 42(b) of the CPSA provides that if ANSI/SVIA 1–2007 is revised after the Commission has published a **Federal Register** notice mandating the

standard as a consumer product safety standard, ANSI must notify the Commission of the revision, and the Commission has 120 days after it receives that notification to issue a notice of proposed rulemaking to amend the Commission's mandatory ATV standard "to include any such revision that the Commission determines is reasonably related to the safe performance of all-terrain vehicles, and notify the Institute of any provision it has determined not to be so related." 15 U.S.C. 2089(b)(1) and (2). The Commission has 180 days after publication of the proposed amendment to publish a final amendment to revise the ATV standard. 15 U.S.C. 2089(b)(2).

In 2012, the Commission revised part 1420 in accordance with the revision procedures set out in the CPSA, to reference the 2010 edition of the ANSI/SVIA 1 standard. 77 FR 12197 (February 29, 2012). In 2018, the Commission published a final rule that amended the mandatory ATV standard to reference the 2017 edition of the ANSI/SVIA 1 standard. 83 FR 8336 (February 27, 2018).¹

II. The ANSI/SVIA 1–2023 Standard and Proposed Rule

On March 21, 2023, SVIA notified the Commission of its publication of a revised ATV standard, ANSI/SVIA 1–2023. On July 27, 2023, the Commission published a proposed rule (NPR), 88 FR 48398, to amend part 1420 to reference the 2023 edition of the ANSI/SVIA 1 standard. In the NPR, the Commission described the material changes made in ANSI/SVIA 1–2023: requirements for hot surfaces; requirements for fuel systems; removal of the maximum recommended tire pressure of 69 kPa (10 psi); and removal of the current requirement that paper user manuals be provided with all ATVs—all with an effective date "beginning with 2026 model year vehicles."

A. Hot Surfaces

ANSI/SVIA 1–2023 Section 12, Hot Surfaces, newly requires all categories of ATVs to meet surface temperature limits. The July 27, 2023, Staff Briefing Package: Notice of Proposed Rulemaking (NPR) to Amend the All-Terrain Vehicle (ATV) Standard (Staff's

NPR Briefing Package)² provides a detailed analysis of the ATV test methods and maximum allowable surface temperatures that can mitigate the risk of contact burns.

Section 12 provides a method to evaluate the increase in surface temperatures that occurs when an ATV is subjected to a driving test. This test evaluates the heat generated from a test vehicle's components, including the exhaust and engine components, when the vehicle is driven for 30 minutes at a maximum speed of 20 mph. After the driving portion of this test, whether performed on a test track or chassis dynamometer, the test instrumentation records surface temperature data throughout the "heat soak" period, during which the heat load generated by the exhaust and surrounding components transfer to other parts of the ATV. The performance requirement in Section 12 limits the maximum temperatures for various touch points per Table 1:

TABLE 1—ANSI/SVIA 1–2023 SURFACE TEMPERATURE LIMITS

Touch point category	Typical contact duration	Maximum material temperature limits, source: ISO 13732–1	
		Metal, no coatings	Plastics, general
Continuous	1 minute or longer	44 °C (111 °F)	44 °C (111 °F)
Intermittent	4 seconds or longer but less than 1 minute	51 °C (124 °F)	60 °C (140 °F)
Momentary	1 second or longer but less than 4 seconds	58 °C (136 °F)	76 °C (169 °F)
Incidental	Less than 1 second	64 °C (147 °F)	85 °C (185 °F)

These surface temperature limits are comparable to those that apply to other consumer products that can pose contact burn hazards. The ANSI Z21.1–2018 *Standard for Household Cooking Gas Appliances*, for example, has maximum allowable surface temperatures of 83.5 °C for plastic surfaces and 66.5 °C for metal surfaces of gas ranges, which are comparable to the temperature limits set in ANSI/SVIA 1–2023. In the NPR, the Commission preliminarily concluded that testing the temperature of specified ATV touch points as provided by ANSI/SVIA 1–2023 is reasonably related to the safe performance of ATVs as specified in CPSA section 42(b) and recommended including this revision in the final rule.

B. Fuel Systems

ATVs equipped with gasoline-fueled engines can have fuel breaches from various locations including fuel hose connections, fuel tank cracks, and fuel filter cracks, among others. The 2023 edition of the ANSI/SVIA standard adds performance requirements to mitigate the risk of fuel leaks and fire hazards. Section 13 of ANSI/SVIA 1–2023, Fuel Systems Requirements, specifies comprehensive performance requirements applicable to various elements of the vehicle's fuel system that may contribute to fuel leaks and fire hazards. No previous edition of ANSI/SVIA 1 has included performance requirements to address fire hazards from fuel leaks.

The new performance requirements to mitigate fuel leaks are the following:

- **Fuel Tank Structural Integrity:** Sections 13.3 and 13.5 Fuel Tank Immersion Leak Test and Fuel Tank Cyclic Pressure Integrity Test, Section 13.6 Fuel Soak Test for Plastic Tanks and Assemblies with Grommets and Seals, Section 13.7.1 Fuel Tank Impact Integrity Test, and Sections 13.8 and 13.15 Fuel Tank Protection Envelope Analysis and Fuel Tank Venting;

- **Fuel Hoses:** Section 13.9 Fuel Line Integrity and Section 13.10 Fuel Line Connection Tensile Test;

- **Fuel Filter and Shut-off Valve:** Section 13.4 Fuel Filter and Shut-off Valve Immersion Leak Test; and

- **Elastomeric Component Durability:** Section 13.11 Fuel Resistance Test, Section 13.12 Ozone Resistance, Section 13.13 Ultraviolet (UV) Resistance Test, and Section 13.14 Corrosion Resistance.

¹ On January 5, 2024, the Commission voted (3–1) to approve publication of this final rule. Commissioner Trumka issued a statement in connection with his vote, available at: <https://www.cpsc.gov/content/RCA-Federal-Register->

Notice-Amendment-to-Standard-for-All-Terrain-Vehicles-Draft-Final-Rule.

² Staff's NPR Briefing Package is available at <https://www.cpsc.gov/s3fs-public/Federal-Register->

Notice-Amendment-to-Standard-for-All-Terrain-Vehicles-Notice-of-Proposed-Rulemaking.pdf?
VersionId=bcc3xJbVevwLkKnSHleL90UVi4plq3lB.

Most of these requirements are one-time design qualification tests. The one-time qualification tests require manufacturers to conduct a single test for certification that the design of a fuel system meets all the applicable requirements, after which components of individual vehicles may be manufactured to those design specifications without further testing. Only the Section 13.3 Fuel Tank Immersion Leak Test and 13.4 Fuel Filter and Shut-off Valve Immersion Leak Test must be performed on each fuel tank unit before they are installed on a manufacturer's ATV production line.

The one-time qualification tests to evaluate fuel tank structural integrity performance involve impacts, cyclical pressure to simulate ambient temperature fluctuations, elevated temperature environments, and simulated rollover scenarios. The required tests evaluate the leakage rates of rollover vent valves in rollover scenarios; the integrity of fuel hose connections; fuel filters and fuel shutoff valves' ability to resist leakage; and elastomeric (rubber) components' ability to resist ultraviolet (UV), ozone, and chemical exposures. The NPR Staff Briefing Package provides detailed explanations of the various subsections of Section 13 that will mitigate fire risks from fuel leaks.³

The fuel system performance requirements in Section 13 are directed at reducing the risk of fuel leaks due to possible fuel breaches, over pressurizations, fuel spills, and component deterioration. Thus, in the NPR, the Commission preliminarily concluded that the fuel system performance requirements in Section 13 of the 2023 edition of the ANSI/SVIA standard are reasonably related to the safe performance of ATVs and recommended including this revision in the final rule.

C. Removal of the Maximum Recommended Tire Pressure

Section 4.19 Tires of the 2007, 2010, and 2017 editions of the ANSI/SVIA 1 standard defined "low-pressure tires" as "having a recommended tire pressure of no more than 69 kPa (10 psi)." Section 4.19 of the 2017 standard differentiates between Pneumatic Tires (Section 4.19.1) and Non-Pneumatic Tires (NPTs) (Section 4.19.2) and sets a Pneumatic Tire requirement of "Maximum

recommended tire pressure of 69 kPa (10 psi)." Section 4.19.2 specifies "NPTs [sic] vertical stiffness shall be designed to produce a ground pressure of 69kPa (10 psi) or less with the subject vehicle." In the 2023 revision, however, the tire pressure value for Pneumatic Tires and vertical stiffness equivalent tire pressure value for NPTs have been deleted.

In the NPR, the Commission preliminarily concluded that the removal of a maximum tire pressure from the ANSI/SVIA 1–2023 standard is reasonably related to the safe performance of ATVs and not detrimental to ATV safety, and accordingly proposed including this revision in the final rule.

D. Owner's Manual

The 2023 edition of ANSI/SVIA 1 removes a phrase stating that mandatory owner's manuals "may be supplemented at the manufacturer's option in electronic form viewable on a display on the ATV or other device," which was added to the 2017 edition. Section 4.21 of the 2023 revision instead states that "[a]ll ATVs shall be provided with a manual in paper or electronic form at the time of delivery to the first purchaser. All ATVs with printed manuals shall be equipped with a means of carrying the manual that protects it from destructive elements while allowing reasonable access" (emphasis added).

Based on the increased risk of consumers not receiving information on the safe use of ATVs if that information is only electronically available, the Commission preliminarily concluded in the NPR that this provision is not consistent with the safe operation of ATVs and proposed maintaining in effect the 2017 version of Section 4.21.

E. Effective Date

The CPSA provides a timetable for the Commission to issue an NPR (within 120 days of receiving notification of a revised ANSI/SVIA standard) and to issue a final rule (within 180 days of publication of the proposed rule), but it does not establish requirements for effective dates. When the Commission adopted the 2010 revision to the ANSI/SVIA standard, it set an effective date of 60 days from publication of the final rule. 77 FR 12197. The Commission set that date after considering comments from several ATV companies to allow them additional time to update their certification labels. When the Commission adopted the 2017 revision to the ANSI/SVIA standard, it set an effective date of January 1, 2019, approximately 10 months after

publication of the final rule, after considering SVIA's comments about the time needed for manufacturers to make the required changes. 83 FR 8336 (Feb. 27, 2018).

The ANSI/SVIA 1–2023 standard provides that the revised voluntary standard is effective beginning with the 2026 model year. However, it does not set a specific date. In the NPR, the Commission proposed a specific effective date of September 1, 2024. The proposed effective date was based on staff's assessment of the time needed to comply with changes to the safety standard, the need for a date certain to facilitate industry planning, and that the proposed effective date was reasonably related to consumer safety. The proposed rule's effective date also was based on staff's assessment that many ATVs already meet some of the new requirements in ANSI/SVIA 1–2023, and the changes from the 2017 to the 2023 voluntary standard will not require significant redesign or testing, both of which facilitate timely compliance.

The Commission preliminarily concluded in the NPR that its proposed effective date was reasonable, feasible, and adequate to protect consumer safety because:

- All ATVs' gasoline powered engines and associated components sold in the U.S. are regulated by the U.S. Environmental Protection Agency (EPA) for exhaust and evaporative emissions, see 40 CFR 1051.515(d) (fuel tank permeation testing) which makes them exempt from having to test per ANSI/SVIA 1–2023's Section 13.5 Fuel Tank Cyclic Pressure Integrity Test.

- The NPR's proposed effective date would allow adequate time for resolution of supply chain issues, quality control issues, and any other issues that might arise.

- The timeline in the Commission's proposed rule incorporating by reference the SVIA 1–2023 standard was similar to the timeline for its rule incorporating by reference the SVIA 1–2017 standard update. In June 2017, SVIA notified the Commission of the 2017 edition of the SVIA–1 standard. The final rule established an effective date of January 1, 2019, which was 18 months from start to finish (comparable to the NPR's proposed interval).

III. Response to Comments on the Proposed Rule

The Commission received comments on the NPR from 11 commenters. Some comments are not relevant to any of the material changes in the ANSI/SVIA 1–2023 standard, described above. Below, the Commission summarizes and

³ Briefing Memorandum and Tab A of NPR to Amend ATV Standard, July 2023: <https://www.cpsc.gov/s3fs-public/Federal-Register-Notice-Amendment-to-Standard-for-All-Terrain-Vehicles-Notice-of-Proposed-Rulemaking.pdf?VersionId=bcc3JxBvewwLkKnSHleL90UVi4p1q3lB>.

responds to the significant issues in the relevant comments.

A. Fuel Systems (Section 13 of ANSI/SVIA 1–2023)

Comment: Safety Research and Strategies (SRS) (commenter ID CPSC–2017–0032–0041) and Consumer Federation of America (CFA) (commenter ID CPSC–2017–0032–0046) assert the fuel system performance requirements in Section 13 of ANSI/SVIA 1–2023 are not effective because they do not reflect real-world scenarios in which fuel system components can be compromised, such as rollovers or collision events.

Response: Section 13 of ANSI/SVIA 1–2023 contains multiple new performance requirements to mitigate fuel leakage in various real-world scenarios, and therefore improves the safety of ATVs. The NPR Staff Briefing Package discusses the various subsections of Section 13 that will mitigate fire risks from fuel leaks.⁴

For example, to mitigate fuel hoses sliding off during operation, Section 13.10 requires fuel hoses to retain connection to a hose barb or other fuel fitting, such as a fuel rail nozzle, when subjected to a 30 lb. tensile (pull) test. This 30-lb pull test requirement would protect a fuel hose from sliding off in scenarios such as: engine vibrations; vegetation or other debris getting caught around a fuel hose; or due to an owner inadvertently pulling on a hose during inspection of the vehicle.

To resist fuel tank cracking or other forms of fuel breach from the fuel tank, unprotected areas of fuel tanks are subjected to a new impact test per Section 13.7.1 of ANSI/SVIA 1–2023. An ATV manufacturer has two options for performing this test: (i) striking the fuel tank surface with a 2-inch diameter, 1.18 lb. sphere (e.g., chrome steel ball bearing) that is dropped from 1.3 meters (51 inches) after the sample fuel tank has been conditioned for 24 hours in a cold chamber set at 4 °F; or (ii) dropping a sample fuel tank filled with antifreeze from a height of 1.2 m (49 inches) onto a concrete surface (the SAE J288 snowmobile fuel tank test method) after the sample has been conditioned for five hours in a cold chamber set at –40 °F. Both test methods ensure that a fuel tank can withstand impact at approximately 11mph. These tests simulate real scenarios, as fuel tanks are

subjected to temperature extremes and plastic fuel tanks may be susceptible to thermal expansion and contraction, which may lead to stress cracks and fuel leaks. Also, loose debris such as stones may strike unprotected areas of the fuel tanks. These test requirements accordingly will help ensure the structural integrity of ATV fuel tanks.

Section 13.7.2 outlines a performance test that positions a fuel tank filled with water at a 90° angle from the horizontal. The fuel tank and its components, such as hoses and valves, are required to not have any leakage in order to pass this test. This test evaluates the potential fuel leakage scenarios of an ATV that has rolled over.

Section 13.15 evaluates fuel leakage from a rollover vent valve. A test fuel tank filled with water is positioned upside down and the fuel tank is observed for leakage from the rollover vent valve.

The Commission finds that the various performance tests of Section 13 of ANSI/SVIA 1–2023 simulate real world scenarios and promote fuel systems' structural integrity. Furthermore, the commenters have not recommended any alternative test methods that are improvements over the current Section 13 performance requirements. Thus, the final rule adopts Section 13 of ANSI/SVIA 1–2023, without change, as part of the mandatory standard.

B. Paper Owner's Manuals (Section 4.21 of ANSI/SVIA 1–2023)

Comment: SVIA supports the voluntary standard's treatment of electronic owner's manuals as an alternative to paper owner's manuals. Section 4.21 of ANSI/SVIA 1–2023 states “[a]ll ATVs shall be provided with a manual in paper or electronic form at the time of delivery to the first purchaser.” SVIA supports electronic owner's manuals because they offer the advantages of being keyword searchable and downloadable if the paper manual is lost.

Conversely, SRS and CFA support maintaining owner's manuals on paper as the default medium. In particular, CFA states:

The default must be paper manuals. Anything less, including an electronic format only manual, is a serious reduction in [safety]. Considering the use of these vehicles—hunting, fishing, camping, trailing riding, and other outdoor recreation—consumers need access to paper manuals if they encounter issues where there is no internet or electronic devices are unavailable.

Response: The Commission agrees with SRS and CFA that eliminating the requirement for paper manuals would

lead to a reduction in safety. While SVIA advocates electronic owner's manuals because they have the advantages of being keyword searchable and downloadable if the paper manual is lost, the key assumption—which may be incorrect—is that at the time an ATV owner is seeking safety-related information from the owner's manual, the owner will have an electronic device and/or an internet connection to access the manual. As SRS points out, “ATVs, like other off-road vehicles, often travel to remote areas that may be beyond cellular phone service range or to an area without sufficient signal to download or open a manual.”

The Commission accordingly determines that this revision in ANSI/SVIA 1–2023 is not reasonably related to the safe performance of ATVs because it would reduce the safety of using ATVs. Consistent with the NPR, the Commission will retain the requirement for a paper owner's manual, as stated in Section 4.21 of the ANSI/SVIA 1–2017. Manufacturers are free to supplement the paper manuals with electronic manuals to achieve the additional benefits identified by SVIA.

C. Tire Pressure (Section 4.19 of ANSI/SVIA 1–2023)

Comment: SVIA supports adopting the 2023 revision's removal of the 10 psi (69 kPa) maximum recommended tire pressure requirement on the basis that it “fails to reflect technological advancements in design of ATV suspension components.” SVIA asserts that “[l]ow-pressure tires were originally required on early ATVs as a basic means of vibration dampening because vehicles lacked more sophisticated suspension equipment” and are no longer required due to improved suspension systems. Conversely, CFA “suggests” rejecting ANSI/SVIA 1–2023's removal of the maximum recommended tire pressure from Section 4.19 of the standard. CFA states that it “is concerned that removing the maximum recommended tire pressure of 69 kPa (10 psi) may not be safety neutral if manufacturers or users disregard warnings not to use ATVs on public roads and paved surfaces.”

Response: The Commission agrees with SVIA that the evolution of more robust suspension systems for ATVs has addressed energy absorption during riding without the need to restrict tire pressures. Although CFA correctly identifies the hazard associated with misuse of ATVs on-road, it does not provide, nor is the Commission aware of, any evidence showing that use of ATVs on paved roads would be more

⁴ Briefing Memorandum and Tab A of the Notice of Proposed Rule (NPR) to Amend the All-Terrain Vehicle (ATV) Standard, July 2023, available at: <https://www.cpsc.gov/s3fs-public/Federal-Register-Notice-Amendment-to-Standard-for-All-Terrain-Vehicles-Notice-of-Proposed-Rulemaking.pdf?VersionId=bcc3Jx3BvevWkKnSHleL90UVi4p1q3lB>.

hazardous with higher recommended tire pressures. Further, as SVIA points out, removing the maximum tire pressure limitation would allow innovations in ATV tires and suspension systems that could lead to improvements in vehicle safety. For this reason, the Commission concludes on the record currently before us that the change allowing manufacturers to set the optimum tire inflation pressures for each ATV model will not reduce safety and is reasonably related to the safe operation of an ATV. Thus, the Commission adopts Section 4.19 of ANSI/SVIA 1–2023 in the final rule without any change.

D. The Effective Date of the Final Rule

Comment: SVIA objects to the NPR's proposed effective date of September 1, 2024, noting that Section 1 Scope of ANSI/SVIA 1–2023 states that the voluntary standard becomes effective beginning with Model Year 2026. SVIA states that the product development cycle for ATVs is two or more years to design and develop new models. SVIA contends that model year designations are typical in the ATV industry and other vehicle industries. SVIA states that EPA emissions requirements are based on model year. SVIA advocates that if the Commission's final rule substitutes a specific calendar date for the model year effective date contained in the SVIA voluntary standard, the date should be no earlier than September 30, 2025, to account for the variations in the model year production cycles of affected ATV manufacturers.

Response: Manufacturers have varying schedules for manufacturing, importing, and distributing vehicles of the same model year, making CPSC enforcement of a rule based on a model year—without a specific effective date—impractical. For compliance and enforcement purposes, and for clarity for industry and consumers alike, the final rule provides a specific effective date for the safety improvements in the 2023 standard revision. Indeed, for CPSC rules the Office of the **Federal Register** (OFR) requires a specific effective date. See 1 CFR 18.17(a) (“Each document submitted for publication in the **Federal Register** that includes an effective date or time period should either set forth a date certain or a time period measured by a certain number of days after publication in the **Federal Register**.”).

In June 2017, SVIA notified the Commission of publication of the 2017 edition of the ANSI/SVIA 1 standard. The final rule established an effective date of January 1, 2019, which was 18 months from notification by SVIA to the

effective date. That revision included significant changes to the ANSI/SVIA 1 standard, including new requirements for stop lamps or combination tail-stop lamps on specified ATVs as well as reflector requirements for all ATVs. Nothing in SVIA's comments or elsewhere in the record suggests that manufacturers had difficulty complying with the 2017 revision on that timeline. Compared to the Commission's successfully implemented rule adopting the 2017 revision, the January 1, 2025, effective date for this rule provides manufacturers more time to comply: The period from SVIA's notification of the revision to the effective date is longer; the period from publication of the NPR to the effective date is longer; and the period from publication of this final rule to the effective date is longer.

The ANSI/SVIA 1–2023 standard was developed by SVIA member companies, an ATV test laboratory, a consumer advocacy group, individual ATV users, and U.S. and Canadian Government agencies through a consensus process. The consensus process started in September 2018 and ended in March 2023.⁵ Thus, SVIA canvass members have been aware of the requirements in the 2023 edition of the ANSI/SVIA 1 standard since March 2023 at the latest.

Nevertheless, the Commission takes SVIA's point that model year cycles are relevant to the industry. Accordingly, to align with the successful implementation of the 2017 revision, the September 1, 2024, effective date in the NPR will be extended to January 1, 2025. This makes the rule effective on the first of the calendar year. Just as with the 2017 revision, the rule will take effect at exactly the same time in the model year.

The particulars of the 2023 standard revision provide CPSC additional confidence that the January 1, 2025, date can be met. Because ATVs' gasoline engines and associated components sold in the U.S. are regulated by the EPA for exhaust and evaporative emissions, they will be exempt from the Fuel Tank Cyclic Pressure Integrity Test per Section 13.5 of ANSI/SVIA 1–2023. In addition, due to existing EPA regulations, most ATV manufacturers will already satisfy some of the new criteria of ANSI/SVIA 1–2023 with no additional effort.

⁵ Voluntary Standards Meeting with Recreational Off-Highway Institute (ROHVA), SVIA, and Outdoor Power Equipment Institute (OPEI) to discuss Off-Highway Vehicle (OHV) Fire and Debris Penetration Hazards, September 19, 2018. Weblink to Meeting Log: <https://www.cpsc.gov/s3fs-public/2018-09-19%20Voluntary%20Standards%20Meeting%20on%20Off-Highway%20Vehicles.pdf?GhlbD87TF1W8m6F9B10g2CpZTCNzSrjP>.

Further, nearly all the fuel system performance requirements in Section 13 of the ANSI/SVIA 1–2023 are one-time proof of design qualification verification tests that do not burden manufacturers with production line testing of every fuel system component or fuel system assembly. There are only a few tests, such as the water immersion fuel tank leakage test in Section 13.3, that require every fuel tank to be tested.

Finally, similar fuel system requirements for other off-highway vehicle voluntary standards have had effective dates as short as 12 months after publication of the voluntary standard. For example, the 2012 edition of the golf car standard, ANSI/ILTV (International Light Transportation Vehicle Association) Z130.1–2012, had an effective date of one year after publication of the voluntary standard. Section 11.3.5 of that standard includes the same rollover vent leakage test as Section 13.15 of the ANSI/SVIA 1–2023 standard. The history of industry compliance with the 12-month effective date for ANSI/ILTV Z130.1–2012 supports the feasibility of the final rule's timeframe.

For all these reasons, and having considered the comments as discussed above, the final rule establishes an effective date of January 1, 2025. This date balances the commenter's pragmatic concerns against the safety benefit of updating the mandatory standard to protect consumers from harm.

E. Other, Out of Scope, Comments

Comment: CFA recommends that ATVs be equipped with seat belts and roll cages to aid in protecting the ATV rider. CFA asserts that speed limiting devices can be defeated by children and that there are high failure rates associated with such devices. CFA commented that Type I ATVs with longer seats may encourage a passenger to ride with an ATV driver, although there are warnings to discourage passengers and to alert consumers that these Type I ATVs are not designed for use with a passenger in addition to a driver. Type II ATVs are intended for passengers; however, CFA expresses the opinion that Type II ATVs should not allow a passenger to ride with an ATV driver.

Mariam Grace (commenter ID CPSC–2017–0032–0040) recommends that to ensure safe operation of ATVs, the Commission should set minimum age requirements for their use and require extensive training for the safe operation of ATVs. The Toy Association (commenter ID CPSC–2017–0032–0043) notes that the definition of a “youth

ATV” in ANSI/SVIA 1–2023 may overlap in some instances with the definition of a “ride on toy” in ASTM 963 Toy Standard. The Toy Association expresses concern that if a toy within the scope of ASTM F963 has been misidentified as falling under the scope of a youth ATV per 16 CFR part 1420 and ANSI/SVIA 1, the toy manufacturer is faced with an impossible situation whereby compliance with these (non-toy) requirements results in the mandate for an “ATV Action Plan” to be generated and filed with the Commission, and instructional material will be required to state “this is not a toy” in contradiction of the design and stated intent of the product, and despite the requirement to comply with the mandatory toy standard under 16 CFR part 1250.

Response: The Commission welcomes dialogue on the above issues and their discussion in future SVIA voluntary standards meetings. However, these comments are not related to the changes made in ANSI/SVIA 1–2023. The 2023 version of the SVIA 1 standard does not change the sections and definitions described by these commenters.

IV. Description of the Final Rule

The final rule revises 16 CFR 1420.3(a), “Requirements for four-wheel ATVs,” to incorporate by reference the ANSI/SVIA 1–2023 standard, instead of the ANSI/SVIA 1–2017 standard. ANSI/SVIA 1–2023 contains requirements and test methods relating to ATVs, including vehicle equipment and configuration, vehicle speed capability, brake performance, pitch stability, electromagnetic compatibility, sound level limits, hot surfaces, and fuel systems. Revisions incorporated into ANSI/SVIA 1–2023 are described in section II of this preamble. The final rule, however, maintains the requirement for paper manuals in ANSI/SVIA 1–2017.

V. Effective Date

The Commission has set an effective date of January 1, 2025, requiring that all ATVs manufactured on or after January 1, 2025, must comply with the final rule.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review a proposed rule for its potential

economic impact on small entities, including small businesses. The NPR explained that the most significant changes in the 2023 revision of the voluntary standard involve requirements for fuel systems and hot surfaces and CPSC’s analysis is that many ATVs already comply with some of these requirements, and therefore the primary cost to manufacturers would be the costs of one-time design qualification tests and production part testing. Because, however, none of the 14 domestic ATV manufacturers the Commission identified meet Small Business Association (SBA) criteria to be considered a small business, CPSC preliminarily assessed that the proposed rule would not have a significant adverse economic impact on any domestic small ATV manufacturers. CPSC further assessed that foreign manufacturers are unlikely to exit the ATV market and are likely to issue General Certificates of Conformity (GCCs), such that the rule would not have a significant, adverse economic impact on ATV importers. 88 FR 48398, 48401–02. The Commission requested comments with data supporting or refuting whether there are ATV manufacturers that may meet the SBA criteria to be considered small businesses.

No commenter identifies any ATV manufacturer that may meet the SBA criteria to be considered a small business. The Commission also did not receive any comments addressing whether the proposed rule will have a significant economic impact on a substantial number of small entities. Accordingly, consistent with the NPR, the Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

This rule contains no new information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). The Commission did not receive any comments on the PRA burden estimate included in the NPR; therefore, in this final rule, the Commission presents its analysis of its PRA burden included in the NPR, which remains the same, with only minor corrections to the calculations for information purposes.

Other CPSC rulemaking, using different sets of assumptions, generate estimates in the same range. The Commission did not receive any comments on the PRA burden estimate included in the NPR.

The rule amends the ATV standard to mandate industry compliance with ANSI/SVIA 1–2023. The standard’s requirements include provisions that fall within the definition of “collection of information,” as defined in 44 U.S.C. 3502(3). Under the PRA, an agency must publish the following information for a collection of information:

- title;
- summary;
- brief description of the need for the information and the use of the information;
- description of the likely respondents and frequency of response to the collection of information;
- estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the Office of Budget Management (OMB).

This information appears below.

Title: Standard for All-Terrain Vehicles.

Summary and Description: The rule amends the ATV standard to mandate industry compliance with ANSI/SVIA 1–2023, American National Standard for Four-Wheel ATVs. The rule requires ATVs to comply with ANSI/SVIA 1–2023, including certification testing in support of GCCs required by section 14 of the CPSA. GCCs must comply with 16 CFR part 1110 concerning the content of the GCC, retention of the associated records, and other applicable requirements. The preparation of the GCC falls within the definition of “collection of information” as defined in 44 U.S.C. 3502(3). Requirements of the 2023 revision that are unchanged from the previous version of the standard, ANSI/SVIA 1–2017, such as labels, hang tags, and instruction manuals, are not included in this PRA analysis.

Description of Respondents: Entities which manufacture or import ATVs.

Estimated Burden: We estimate the total burden of this collection of information is 441 hours and \$16,229. Table 2, below, summarizes our estimation of annual reporting burden hours and cost.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN
[Some numbers adjusted due to rounding]

Burden type	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours	Annual cost
Labor Burden:						
GCC Preparation	38	1	38	1.5	57	\$2,098
One-Time Design Qualification Testing Recordkeeping	25	1.9	48	8	382	\$14,072
Total Burden					439	\$16,170

Comments: In the NPR (88 FR 48398), pursuant to 44 U.S.C. 3506(C)(2)(A), the Commission invited comments on the Commission's assessment of the burden of these information collection requirements.

PRA Burden Estimation

This section describes the development of staff's burden estimates summarized in Table 2, above.

GCC Preparation

Section 14 of the CPSA requires manufacturers and importers of ATVs to prepare GCCs. Based on current ATV action plans filed with CPSC, there are 38 entities that supply, or intend to supply, ATVs to the U.S. market. Staff found evidence of ATV sales activity, in the form of actual sales or advertisement for sale, for only 32 of the 38 entities. Nevertheless, taking a conservative approach, staff assumed that all 38 entities (both manufacturers and importers) are currently supplying ATVs to the U.S. market and used this number to estimate the burden hours and annual cost associated with GCCs. ATV manufacturers typically produce one GCC that covers all the models of a model year, which implies the number of PRA responses is one per entity, per year. Staff estimates the time required to produce this GCC is about 1.5 person hours per year. Therefore, the estimated burden associated with GCCs is 57 person hours (38 entities × 1 GCC per year × 1.5 hours per GCC = 57 person hours). To generate the estimated annual cost to industry associated with GCCs, staff multiplied the estimated number of burden hours by \$36.80, the total hourly compensation for sales and office workers in goods-producing private industries.⁶ Therefore, the estimated annual cost to industry associated with preparation of the GCCs

is approximately \$2,098 (\$36.80 per hour × 57 hours = \$2,097.60).

Recordkeeping Supporting GCC Preparation

In the event a foreign manufacturer chooses not to conduct required certification testing and/or provide documentation to support preparation of the GCC, its importer could choose to conduct its own certification testing. However, staff considers this scenario unlikely, and for several of the importers, cost prohibitive. Therefore, staff assumes entities conducting certification testing and associated recordkeeping are limited to ATV manufacturers. Based on 2020 sales data,⁷ there were 25 known U.S. and foreign manufacturers supplying as many as 239 new and old ATV models and 420,730 ATVs to the U.S. market.

Staff estimates the average life cycle of an ATV model is approximately five years, which implies each manufacturer will conduct one-time design qualification testing on approximately 1.9 models per year (239 models ÷ 25 entities ÷ 5 years = 1.912, or about 1.9 models per entity per year). Staff estimates the time required to create and maintain certification records to be approximately eight person hours per model. Therefore, the estimated labor burden associated with certification testing recordkeeping is approximately 382 person hours (25 entities × 1.912 ATV models per year × 8 person hours per model = 382.4 person hours). As above, staff multiplied the estimated number of burden hours by \$36.80, the total hourly compensation for sales and office workers in goods-producing private industries. The estimated annual cost to industry associated with certification testing recordkeeping is approximately \$14,072 (\$36.80 per person hour × 382.34 person hours = \$14,072.32).

Summary of Burden Hours and Cost

Based on this analysis, the final rule would impose an annual burden to industry of approximately 439 hours per year (57 for preparation of the GCC and 382.4 hours for recordkeeping associated with the certification tests upon which the GCCs are based). The estimated annual cost is approximately \$16,170 (\$2,097.6 and \$14,072.32 for GCC preparation and certification testing recordkeeping, respectively).

The above estimates are a conservative estimate of the average annual burden to ATV entities. The rule requires all ATVs manufactured on or after January 1, 2025, to comply with ANSI/SVIA 1–2023. Therefore, in the first year following promulgation of the rule, existing entities may be required to redesign and test more than the estimated average 48 models per year and incur higher costs than the estimates in this PRA analysis. In subsequent years, costs could be less, as a fewer number of ATV models will require design updates.

As stated above, CPSC did not receive any comments on the PRA burden estimate. CPSC has submitted the information collection requirements of this final rule to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d).

VIII. Environmental Considerations

The Commission's regulations provide a categorical exemption for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement as they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(1). This amendment falls within the categorical exemption.

IX. Incorporation by Reference

The OFR has regulations concerning incorporation by reference. 1 CFR part 51. For a final rule, agencies must discuss in the preamble to the rule ways that the materials the agency incorporates by reference are reasonably available to interested persons and how

⁶ U.S. Bureau of Labor Statistics, "Table 4. Employer Costs for Employee Compensation for private industry workers by occupational and industry group," updated March 17, 2023, Table 4. Private industry workers by occupational and industry group—2022 Q04 Results (*bls.gov*).

⁷ Power Products Marketing, USATVDBAAdultYouth'94--'20--CPSC and Non-MIC ATV Database '20—CPSC databases, Prairie Eden, MN, 2021.

interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, this preamble summarizes the provisions of ANSI/SVIA 1–2023, American National Standard for Four Wheel All-Terrain Vehicles, ANSI-approved March 17, 2023, that the Commission is incorporating by reference. ANSI/SVIA 1–2023 is copyrighted. Interested people may purchase a copy of ANSI/SVIA 1–2023 from Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, CA 92618–3806; telephone: 949–727–3727 ext. 3023; www.svia.org. In addition, a read-only copy of the standard is available for viewing on the SVIA website at <https://svia.org/ansi-svia-1-2023/>. A copy of the standard is also available for inspection at the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504–7479, email: cpssc-05@cpssc.gov.

X. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the Federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 42 of the CPSA establishes that the rules to be issued for ATVs under that section are “consumer product safety standards.” Therefore, the preemption provision of section 26(a) of the CPSA applies to this final rule.

XI. Notice of Requirements

The CPSA establishes requirements for product certification and testing. Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third-party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission is required

to publish a notice of requirements (NOR) for the accreditation of third-party conformity assessment bodies to assess conformity with any children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). In 2010, the Commission published an NOR for accreditation of third-party conformity assessment bodies for testing ATVs designed or intended primarily for children 12 years of age or younger. 75 FR 52616 (Aug. 27, 2010). Because the revisions the 2023 revisions to the SVIA 1 standard do not substantially alter third-party conformance testing requirements for ATVs designed or intended primarily for children 12 years of age or younger, the current NOR for third-party testing of youth ATVs will remain unchanged. Thus, the existing accreditations that the Commission has accepted for testing to the 2017 ATV standard will also cover testing of children's products to the revised ATV standard.

XII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” 5 U.S.C. 804(2). Pursuant to the CRA, OIRA determined that this rule is not a major rule. To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1420

Consumer protection, Imports, Incorporation by reference, Infants and children, Information, Labeling, Law enforcement, Recreation and recreation areas, Reporting and recordkeeping requirements, Safety.

For the reasons stated in the preamble, the Commission amends part 1420 of title 16 of the Code of Federal Regulations as follows:

PART 1420—REQUIREMENTS FOR ALL-TERRAIN VEHICLES

■ 1. The authority citation for part 1420 is revised to read as follows:

Authority: 15 U.S.C. 2089.

■ 2. Revise § 1420.1 to read as follows:

§ 1420.1 Scope and application.

This part, a consumer product safety standard, prescribes requirements for all-terrain vehicles.

■ 3. Amend § 1420.3 by revising paragraph (a) to read as follows:

§ 1420.1 Requirements for four-wheel ATV's.

(a) Each new assembled or unassembled ATV manufactured before January 1, 2025, shall comply with all applicable provisions of the American National Standard for Four-Wheel All-Terrain Vehicles (ANSI/SVIA 1–2017), ANSI-approved on June 8, 2017. Each new assembled or unassembled ATV manufactured on or after January 1, 2025, shall comply with all applicable provisions of the American National Standard for Four-Wheel All-Terrain Vehicles ANSI-approved on March 17, 2023 (ANSI/SVIA 1–2023), with the exception of Section 4.21 Owner's Manual, as to which it shall continue to comply with the ANSI/SVIA 1–2017 standard. ANSI/SVIA 1–2017 and ANSI/SVIA 1–2023 are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504–7479. For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. The material may be obtained from the Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, CA 92618–3806; telephone: 949–727–3727; www.svia.org. In addition, a read-only copy of ANSI/SVIA 1–2023 is available for viewing on the SVIA website at <https://svia.org/ansi-svia-1-2023/>.

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Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–01309 Filed 1–22–24; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA-2020-C-2131]

Listing of Color Additives Exempt From Certification; Jagua (Genipin-Glycine) Blue; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is confirming the effective date of December 4, 2023, for the final rule that appeared in the **Federal Register** of November 3, 2023, and that amended the color additive regulations to provide for the safe use of jagua (genipin-glycine) blue as a color additive in various food categories at levels consistent with good manufacturing practice.

DATES: The effective date of December 4, 2023, for the final rule published in the **Federal Register** of November 3, 2023 (88 FR 75490) is confirmed.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this final rule into the "Search" box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Shayla West-Barnette, Office of Food Additive Safety (HFS-255), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1262.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 3, 2023 (88 FR 75490), we amended the color additive regulations to add § 73.225 (21 CFR 73.225), "Jagua (genipin-glycine) blue," to provide for the safe use of jagua (genipin-glycine) blue as a color additive at levels consistent with good manufacturing practice in flavored milk; dairy drinks and substitutes; dairy and dairy alternative yogurt; ice cream, frozen dairy and dairy alternative desserts, puddings, gelatins, ices, sorbets; ready-to-eat multicolored cereals; flavored potato chips, tortilla, corn, and other chips; candy and chewing gum; non-alcoholic fruit based/

flavored drinks, nutritional beverages and smoothies; flavored cream cheese-based spreads; and icings, frostings, jams, syrups, and fruit toppings and fillings.

We gave interested persons until December 4, 2023, to file objections or requests for a hearing. We received no objections or requests for a hearing on the final rule. Therefore, we find that the effective date of the final rule that published in the **Federal Register** of November 3, 2023, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, we are giving notice that no objections or requests for a hearing were filed in response to the November 3, 2023, final rule. Accordingly, the amendments issued thereby became effective December 4, 2023.

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-01106 Filed 1-22-24; 8:45 am]

BILLING CODE 4164-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2022-0134; FRL-11402-01-OCSPJ]

Linuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of linuron in or on alfalfa, forage and alfalfa, hay. Tessenderlo Kerley, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 23, 2024. Objections and requests for hearings must be received on or before March 25, 2024, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2022-0134, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket)

in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; email address: RDfRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the **Federal Register** Office's e-CFR site at <https://www.ecfr.gov/current/title-40>.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2022-0134 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before March

25, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2022-0134, by one of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 22, 2022 (87 FR 16133) (FRL-9410-11-OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F8972) by Tesserlo Kerley, Inc., 2910 N 44th Street, Suite 100, Phoenix, AZ 85018. The petition requested that 40 CFR 180.184 be amended by establishing tolerances for residues of the herbicide linuron, in or on alfalfa, forage and alfalfa, hay at 1.0 and 3.0 parts per million (ppm), respectively. That document referenced a summary of the petition prepared by Tesserlo Kerley, Inc., the registrant, which is available in the docket, <https://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FDCA allows EPA to establish a tolerance (the

legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for linuron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with linuron follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicological database for linuron is robust and the data requirements are satisfied. With repeated oral dosing in test animals, linuron produces three primary effects: (1) changes in the hematopoietic system in dogs, rats, and mice; (2) changes in the male reproductive system in developing rats; and (3) decreases in T₃ and T₄ levels detected in Endocrine Disruptor Screening Program (EDSP) Tier 1 screening assays in rats. Specific information on the studies received and the nature of the adverse effects caused by linuron as well as the no-observed adverse-effect level (NOAEL) and the lowest-observed adverse-effect level (LOAEL) from the toxicity studies can be found at <https://www.regulations.gov> in document *Linuron. Human Health Risk Assessment for a New Use on Alfalfa* hereinafter "Linuron Human

Health Risk Assessment" in docket ID number EPA-HQ-OPP-2022-0134.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <https://www.epa.gov/pesticides/factsheets/riskassess.htm>. A summary of the toxicological endpoints for linuron used for human risk assessment is shown in the Linuron Human Health Risk Assessment on pages 16–17.

C. Exposure Assessment

1. **Dietary exposure from food and feed uses.** In evaluating dietary exposure to linuron, EPA considered exposure under the petitioned-for tolerances as well as all existing linuron tolerances in 40 CFR 180.184. EPA assessed dietary exposures from linuron in food as follows:

i. **Acute exposure.** Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for linuron. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed

tolerance-level residues, 100% crop treated (PCT) and incorporated empirical processing factors and default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance-level residues, average PCT, and incorporated empirical processing factors and default processing factors. The chronic dietary analysis incorporated average PCT data for asparagus (15%), carrots (85%), celery (20%), corn ($\leq 1.0\%$), cotton ($\leq 1.0\%$), dry beans/peas ($\leq 1.0\%$), potatoes (10%), grain sorghum ($\leq 1.0\%$), soybeans ($\leq 1.0\%$), and wheat ($\leq 1.0\%$).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that linuron does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the

average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which linuron may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for linuron in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of linuron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <https://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Water Calculator (PWC), a graphical user interface that runs the Pesticide Root Zone Model (PRZM, v 5, November 15, 2006), PRZM–GW, and the Variable Volume Water Body Model (VWWM, 3/6/2014), the estimated drinking water concentrations (EDWCs) of linuron for acute exposures are estimated to be 65 parts per billion (ppb) for surface water and 40 ppb for ground water, and those for chronic exposures for non-cancer assessments are estimated to be 47 ppb for surface water and 37 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 65 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 47 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Linuron is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide's residues and “other substances that have a common mechanism of toxicity.” EPA has not found linuron to share a common mechanism of toxicity with any other substances, and linuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that linuron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <https://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for linuron is considered adequate. The requirement for the comparative thyroid assay that was required as part of the EDSP to evaluate the potential for increased sensitivity in the young was waived. As a result, the FQPA SF of 10X for linuron has been removed for all exposure routes and durations.

ii. Although findings were observed in the acute neurotoxicity study, the concern for neurotoxicity is low since: (1) a clear NOAEL was established and is 5-fold lower than the dose causing potential neurotoxic effects; (2) the selected endpoints for risk assessment are protective of the observed neurotoxicity; (3) no corroborative neuropathology was associated at the LOAEL or higher dose in the acute neurotoxicity study; and (4) there were no other neurotoxic-like effects observed in the linuron database indicating the nervous system is not the most sensitive for linuron.

iii. There is evidence of quantitative susceptibility in the two-generation reproduction toxicity study in rats and developmental effects, but not susceptibility, in the rat and rabbit developmental studies; however, concern is low since there are clear NOAELs established for the developmental and offspring effects and the selected endpoints are protective of these effects.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary (food) exposure assessment utilized conservative upper-bound inputs including assuming 100% of the registered crops treated, and tolerance-level residues for all commodities. The chronic dietary exposure assessment was partially refined, used tolerance-level residues for all commodities and average PCT estimates when available. The drinking water assessment utilized water concentration values generated by models and associated modeling parameters which are designed to produce conservative, health protective, high-end estimates of water concentrations which are not likely to be exceeded. The dietary (food and drinking water) exposure assessment does not underestimate the potential exposure for infants, children, or women of childbearing age. No residential uses are proposed or registered for linuron at this time, so no

residential exposure assessment was conducted.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to linuron will occupy 9.5% of the aPAD for infants, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to linuron from food and water will utilize 84% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no residential uses for linuron.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term adverse effect was identified; however, linuron is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for linuron.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, linuron is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-

term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for linuron.

5. *Aggregate cancer risk for U.S. population.* Linuron is considered a Group C carcinogen requiring no quantification of human cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to linuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for the determination of linuron residues of concern in/on plant and livestock tissues. The current enforcement methods determine linuron and all metabolites hydrolyzable to 3,4-dichloroaniline (3,4-DCA). The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for linuron.

C. Response to Comments

EPA received one comment to the notice of filing from March 22, 2022, which opposed the use of linuron on any food. The commenter expressed a general opposition to the use of “toxic chemicals” on food. The Agency understands the commenter’s concerns and recognizes that some individuals believe that certain pesticide chemicals should not be permitted in our food. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when the pesticide meets the safety standard imposed by that statute. The Agency is required by section 408 of the FFDCA to estimate the risk of the potential exposure to these residues. EPA has concluded, based on data submitted in support of the petition and other reliable data, that there is a reasonable certainty that no harm will result from aggregate human exposure to linuron residues from use on alfalfa. Testing requirements for pesticide tolerances have been specified by rulemaking after allowing for notice and comment by the public and peer review by appropriate scientific bodies. See 40 CFR part 158 for further information.

V. Conclusion

Therefore, tolerances are established for residues of linuron in or on alfalfa, forage and alfalfa, hay at 1 and 3 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations” (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 7, 2023.

Charles Smith,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.184, amend the table in paragraph (a) by:

- a. Adding a heading for the table; and
- b. Adding in alphabetical order the entries “Alfalfa, forage” and “Alfalfa, hay”.

The additions read as follows:

§ 180.184 Linuron; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Alfalfa, forage	1
Alfalfa, hay	3
* * *	*

* * * * *

[FR Doc. 2024–01109 Filed 1–22–24; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 538

[GSAR Case 2022–G514; Docket No. 2023–0009; Sequence No. 1]

RIN 3090–AK58

General Services Acquisition Regulation (GSAR); Standardizing Federal Supply Schedule Clause and Provision Prescriptions; Correction

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).
ACTION: Final rule; correction.

SUMMARY: On January 12, 2024, GSA published a final rule amending the General Services Administration Acquisition Regulation (GSAR) to clarify when GSAR clauses apply to Federal Supply Schedule contracts. Some text inadvertently appeared in a section revision. This correction removes that text.

DATES: This correction is effective February 12, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Torberntsson, Procurement Analyst, at 720-475-0568 or gsarpolicy@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or gsaregsec@gsa.gov. Please cite GSAR Case 2022-G514.

SUPPLEMENTARY INFORMATION: GSA is making a correction to a paragraph in the revision of 48 CFR 538.238-73 published in a final rule on January 12, 2024. The words “the Handicapped.” erroneously appeared in paragraph (b)(1) of the section.

Correction

In FR Doc. 2024-00519 appearing on page 2173 in the issue of January 12, 2024, make the following correction:

552.238-73 [Corrected]

■ On page 2173, in the second column, paragraph (b)(1) in revised section 552.238-73 is corrected by removing “the Handicapped.” following the first sentence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2024-01216 Filed 1-22-24; 8:45 am]

BILLING CODE 6820-61-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 701, 702, 704, 705, 706, 715, 719, 725, 731, 742, 750, and 752

RIN 0412-AA88

U.S. Agency for International Development Acquisition Regulation; Administrative Updates

AGENCY: U.S. Agency for International Development.

ACTION: Direct final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is issuing this direct final rule revising the Agency for International Development Acquisition Regulation (AIDAR) to maintain consistency with Federal and agency regulations, remove obsolete material and internal agency procedures, and make editorial amendments to clarify the regulation.

DATES: This rule is effective May 22, 2024, without further action, unless significant adverse comments are received by February 22, 2024. If significant adverse comment(s) are received, USAID will publish a timely withdrawal of those portion(s) of the rule in the **Federal Register**.

ADDRESSES: You may send comments, identified by your name, company name (if any), and the Regulatory Information Number (RIN) 0412-AA88 for this rulemaking via the following method:

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

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. We recommend that you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute. If your comment cannot be submitted using <https://www.regulations.gov>, please email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, 202-916-2622, policymailbox@usaid.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

USAID is publishing this revision as a direct final rule as the changes are conforming and administrative amendments and the agency does not anticipate any significant adverse comments. This rule will be effective on the date specified in the **DATES** section above without further notice unless significant adverse comment(s) are received by the date specified in the **DATES** section above.

USAID will only address comments that explain why the rule would be inappropriate, ineffective, or unacceptable without a change. USAID may not consider comments that are insubstantial or outside the scope of the rule.

If significant adverse comments are received on the direct final rule, USAID will publish a timely partial withdrawal in the **Federal Register** informing the public what sections of the rule will not take effect. Any portions of the direct final rule for which no significant adverse comments are received will become final after the designated period.

Additionally, USAID is publishing a separate document in the “Proposed Rules” section of this **Federal Register** that will serve as the proposal to approve AIDAR revisions for which significant adverse comments may be received. In this case, USAID will address all public comments in a subsequent final rule based on the proposed rule. USAID will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time.

II. Background

This direct final rule is part of the AIDAR rewrite initiative, in which all parts of the regulation were reviewed and updated to: make editorial amendments to clarify the regulation, include previously implemented policy, and delete outdated information and agency internal guidance from the regulation. This rule incorporates updates to the AIDAR parts 701, 702, 704, 705, 706, 715, 719, 725, 731, 742, 750, and 752.

The following changes are implemented by this direct final rule:

- AIDAR 701.303, 701.470, 701.601, 701.602-1, 702.170, 704.2105 [new section], 704.5 [new subpart], 705.102, 705.202, 706.302-70, 715.602, 715.604, 719.271-6, 725.170, 725.403, 731.771, 731.773, 742.770, 750.000, 750.7101, 750.7102, 750.7103, 750.7104, 750.7105, 750.7106-1, 750.7106-2, 750.7106-3, 750.7107, 750.7108, 750.7109-1, 750.7109-3, 750.7110, 752.202-1, 752.222-70, 752.222-71, 752.225-9 [redesignated as 752.225-11], 752.225-70, 752.227-14, 752.231-71, 752.7018, 752.7019, 752.7021, 752.7022, 752.7023, 752.7024, 752.7028, and 752.7032, are revised for clarity, to maintain consistency with Federal and agency regulations, to update references to current agency procedures, to remove outdated information and internal agency guidance, and, where applicable, to correct errors and omissions. Additional background and specific highlights of changes include:

- AIDAR sections 701.601(c)(2), 719.271-6(a)(4), 752.202-1(c) (Alternate 71), 752.7018, 752.7019, 752.7021, 752.7022, 752.7023, and 752.7024 are being removed (and in most instances reserved) as USAID no longer has a separate Participant Training program; therefore, the sections, paragraphs, and clauses referring to it are obsolete.

- Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for fiscal year (FY) 2019 prohibits agencies after August 13, 2019, from entering into a contract (or extending or renewing a contract) with an entity that procures or obtains any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Section 889(a)(1)(B) of the John S. McCain NDAA for FY 2019 prohibits executive agencies from entering into a contract (or extending or renewing a

contract) with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The prohibitions for both section 889(a)(1)(A) and section 889(a)(1)(B) have been implemented for contracts subject to the Federal Acquisition Regulations (FAR) (48 CFR chapter 1) through the provision at 52.204–24, the clause at 52.204–25, and the provision at 52.204–26. As the prohibition in sections 889(a)(1)(A) and (a)(1)(B) of the FY 2019 NDAA cover entities that the U.S. Government contracts with, USAID has made a determination that the requirements of sections 889(a)(1)(A) and (a)(1)(B) do not apply to personal services contracts with individuals awarded under AIDAR appendices D and J. The associated risks are mitigated by providing such individuals with the needed support services, equipment, and supplies. In addition, per the requirements in appendices D and J, personal services contractors are not allowed to subcontract out any work.

AIDAR section 704.2105 is added to allow contracting officers to omit provisions and clauses prescribed in FAR subpart 4.21 from personal services contracts awarded under AIDAR appendices D and J.

- The new AIDAR subpart 704.5, Electronic Commerce in Contracting, encourages the use of electronic commerce through USAID's eSign Portal located at <https://account.docusign.com>.

- AIDAR sections 705.102, 705.202, and 706.302–70 are updated to reflect the agency's current policies on exceptions to publicizing and competition requirements. In accordance with FAR 5.102(a)(5)(iii), sections 705.102 and 705.202 exempt certain solicitations and awards of personal services contracts and contracts at \$250,000 or less from the publicizing requirements in FAR part 5. Section 706.302–70, Impairment of foreign aid programs, was revised to clarify, among other administrative updates, that authorities in 706.302–7(b)(1) through (4) can be used on a class basis. An Assistant Administrator's determination and findings may cover one or more contract actions or programs within delegated program authority. A determination and findings made by the Administrator may cover all USAID programs, pertain to matters which concern more than one Assistant Administrator, or any Agency contract actions at the Administrator's discretion.

- On January 29, 2020, the United States adopted the Agreement between the United States of America, the United Mexican States (Mexico), and Canada (the United States-Mexico-Canada Agreement), as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to United States and Mexico) (Pub. L. 116–113) (19 U.S.C. chapter 29 (sections 4501–4732), USMCA). The USMCA supersedes the North American Free Trade Agreement (NAFTA); the reference to NAFTA in 725.403 is replaced with USMCA.

- AIDAR subpart 731.7 on contracts with nonprofit organizations is revised to conform to the policies in 2 CFR part 200, Office of Management and Budget's (OMB) Regulation, and 2 CFR part 700, USAID's supplement to 2 CFR part 200. On December 26, 2013 (at 78 FR 78590), OMB published new guidance at 2 CFR part 200 entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance)". The OMB guidance, which supersedes OMB Circulars A–21, A–87, A–89, A–102, A–110, A–122, and A–133, and the guidance in Circular A–50 on Single Audit Act follow-ups, was adopted by Federal agencies, including USAID, and became effective on December 26, 2014.

- AIDAR sections 731.771, 750.7101, 750.7103, and 750.7110 are being revised or removed (and reserved) as a result of agency deregulatory efforts. Notably, section 731.771 is no longer necessary as Government-wide policies on bid and proposal costs for awards with nonprofit organizations have been established in 2 CFR part 200.

- AIDAR clause at 752.222–71, Nondiscrimination, is being revised to mirror USAID's policy statement on Equal Employment Opportunity, which can be found on the agency's public website at <https://www.usaid.gov/open/policy-statement/oct-07-2021-equal-employment-opportunity>. Revisions to 752.222–71 encourage contractors to develop and enforce nondiscrimination policies consistent with USAID's approach to workplace nondiscrimination.

III. Impact Assessments

(1) Regulatory Planning and Review

This direct final rule was drafted in accordance with Executive Order (E.O.) 12866, as amended by E.O. 14094, and E.O. 13563. OMB has determined that this rule is not a "significant regulatory action," as defined in section 3(f) of E.O.

12866, as amended, and is therefore not subject to review by OMB.

(2) Congressional Review Act

This direct final rule is not a major rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

(3) Executive Order No. 13132

This rule will not have a substantial direct effect on the states, on the relationships between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this direct final rule does not contain policies that have federalism implications.

(4) Regulatory Flexibility Act

The rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Further, the rule incorporates administrative changes to the AIDAR and does not add any new requirements on USAID contractors, including small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

(5) Paperwork Reduction Act

This rule does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 701, 702, 704, 705, 706, 715, 719, 725, 731, 742, 750, and 752

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR chapter 7 as follows:

SUBCHAPTER A—GENERAL

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for part 701 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

Subpart 701.3—U.S. Agency for International Development Acquisition Regulation

■ 2. Amend section 701.303 by revising paragraph (a) and adding a heading for paragraph (c) to read as follows:

701.303 Publication and codification.

(a) *General.* The AIDAR is USAID's Acquisition Regulation supplementing the FAR (48 CFR chapter 1) and is published as chapter 7 of title 48, Code of Federal Regulations. Changes to the AIDAR shall be published in compliance with FAR part 1.

* * * * *

(c) *Authorities.* * * *

Subpart 701.4—Deviations from the FAR or AIDAR

■ 3. Revise section 701.470 to read as follows:

701.470 Procedure.

(a) *Deviation from the FAR or AIDAR affecting one contract or transaction.* (1) Deviations that affect only one contract or procurement require prior approval by the head of the contracting activity.

(2) In preparing and submitting deviations, USAID operating units must follow the applicable USAID policy, including mandatory consultations with the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P) and the Office of the General Counsel. Approved deviations must be retained in the contract file.

(b) *Class deviations from the FAR or AIDAR.* Class deviations are those that affect more than one contract or contractor. Deviations involving basic ordering agreements or indefinite-delivery contracts are class deviations as they are considered to involve more than one contract.

(1) Class deviations from the AIDAR will be processed in accordance with the applicable USAID policy. Individual heads of contracting activities have authority to approve class deviations affecting contracts only within the contracting activity under their management authority. Only the M/OAA Director has authority to approve class deviations that affect more than one contracting activity.

(2) Class deviations from the FAR will be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) pursuant to FAR 1.404. M/OAA/P is responsible for consultations with the C/CAAC. If the head of the contracting activity determines that urgency precludes such consultations, the deviation must include the reason, certified by the head of the contracting activity, for not coordinating with the C/CAAC and must be promptly shared with M/OAA/P. M/OAA/P is responsible for notifying the C/CAAC of the class deviation.

(3) Class deviations from the FAR and the AIDAR will expire two (2) years

from the date of approval, unless a shorter period is specified in a deviation or approval is rescinded. Class deviations from the FAR or the AIDAR that are based on statutory requirements or those that are in an active agency or Federal rulemaking process may extend beyond the 2-year period until the rulemaking is completed. Expiration of the deviation or the completion of related rulemaking ends its availability for use in future awards and modifications. Expiration dates must be shown on all class deviations.

(4) Class deviations cannot be extended, except as provided in paragraph (b)(3) of this section. A new deviation to replace an expiring deviation must be prepared and approved in accordance with applicable Agency policy.

(5) Approved class deviations must be retained by the issuing office and also in each contract file where the deviation is used.

(c) *Deviation request requirements.* All requests for deviations must contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, and, as applicable, the name(s) of the contractor(s), and the contract or task order number(s).

(d) *Award terms.* Once the terms and conditions of an award are approved based on a deviation, they remain in effect unless such authority is limited by the terms of the contract or removed by a modification.

Subpart 701.6—Career Development, Contracting Authority, and Responsibilities

■ 4. Revise section 701.601 to read as follows:

701.601 General.

(a) *M/OAA Director.* (1) Pursuant to the delegations in USAID's Automated Directives System (ADS) Chapter 103, the M/OAA Director is authorized to act as the head of the agency for all purposes described in the Federal Acquisition Regulation (FAR, 48 CFR chapter 1), except for the authority in FAR 6.302–7, 17.602(a), 19.201(c), 27.306(a), and 30.201–5, or where the “head of the agency” authority is expressly not delegable under the FAR or AIDAR. Further, the M/OAA Director is responsible for implementing the

procurement-related aspects of the Foreign Assistance Act, Executive Order 11223, the Office of Federal Procurement Policy Act, and other statutory and Executive Branch procurement policies and requirements applicable to USAID operations, including those authorities and responsibilities delegated to the Senior Procurement Executive as specified in the ADS.

(2) The M/OAA Director has specific authority to:

(i) Select and appoint contracting officers and terminate their appointments in accordance with FAR 1.603; and

(ii) Exercise or delegate the authorities identified in FAR subpart 1.4 with regard to deviations from FAR subpart 1.4.

(b) *Heads of contracting activities except the M/OAA Director.* Except as otherwise prescribed, the head of each contracting activity (as defined in 702.170) is responsible for the procurement of supplies and services within the contracting activity under their management authority. The heads of USAID contracting activities are vested with broad authority to carry out the programs and activities for which they are responsible. This includes authority to execute contracts and establish procurement guidance and standards (including delegations, assignments of responsibilities, workflow procedures, and internal reporting requirements) for their programs and activities, subject to Government-wide and USAID requirements and limitations, such as those found in this section and particularly 701.603–70, the USAID policy regarding the direct-hire status of contracting officers.

(c) *Contracting activity procedures.* A contracting activity may establish procurement guidance, standards, strategies, practices, or procedures to implement its programs and activities. Such guidance, standards, strategies, practices, or procedures must be consistent with government-wide or agency-specific regulations and policies, or, if inconsistent, must be processed as a deviation in accordance with 701.470. A contracting activity may also establish procurement guidance, standards, strategies, practices, or procedures for its programs and activities, which are in the best interest of the Government and which are not specifically addressed in the government-wide or agency-specific regulations and policies, nor prohibited by law, Executive order, or other regulation.

(d) *Limitations.* The authority of heads of contracting activities to execute contracts is limited as follows:

(1) *The Assistant to the Administrator for the Bureau of Humanitarian Assistance (AtA/BHA)*. (i) Authority to execute and modify contracts for immediate disaster relief purposes, including personal services contracts up to \$500,000 per transaction.

(ii) Authority to execute simplified acquisitions up to \$50,000 for immediate disaster relief purposes, or delegate such authority to qualified individuals in BHA. Such individuals must be selected and appointed in accordance with the requirements in FAR 1.603 and AIDAR 701.603.

(2) *Overseas heads of contracting activities*. (i) Authority to execute contracts and modifications where the total estimated cost of the contract, including any modifications, does not exceed \$1,000,000 (or local currency equivalent) for personal services contracts.

(ii) Authority to execute simplified acquisitions within the threshold defined in FAR 2.101 (or local currency equivalent).

(iii) May delegate the authority for simplified acquisitions up to \$50,000 to qualified individuals within that contracting activity. Such individuals must be selected and appointed in accordance with the requirements in FAR 1.603 and AIDAR 701.603.

■ 5. Revise section 701.602–1 to read as follows:

701.602–1 Authority of contracting officers in resolving audit recommendations.

With the exception of termination settlements subject to part 749, contracting officers have the authority to negotiate and enter into settlements with contractors for costs questioned under audit reports, or to issue a contracting officer's final decision pursuant to applicable dispute resolution procedures (in the event that questioned costs are not settled by negotiated agreement) in accordance with USAID's internal policy. The negotiated settlement or final decision will be final, subject only to a contractor's appeal under the provisions of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), or other procedures, as applicable. Internal policy and procedures for resolving audit recommendations are found in ADS series 500 chapters for audits.

PART 702—DEFINITIONS OF WORDS AND TERMS

■ 6. The authority citation for part 702 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O.

12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

Subpart 702.170—Definitions

■ 7. Amend section 702.170–1 as follows:

■ a. Add a definition for “Assistant Administrator” in alphabetical order; and

■ b. Revise the definitions of “Contracting activities” and “Head of the contracting activity”.

The addition and revisions read as follows:

702.170–1 Definitions.

* * * * *

Assistant Administrator means the principal officer and advisor in a USAID Bureau who administers programs within delegated authorities and in accordance with policies and standards established by the Administrator. The position title Assistant Administrator also includes the position Assistant to the Administrator.

* * * * *

Contracting activities also referred to as “procuring activities” within USAID are:

(1) *The USAID/Washington activities*. The contracting activities located in Washington, DC are: The Bureau for Management, Office of Acquisition and Assistance (M/OAA) and the Bureau for Humanitarian Assistance (BHA). Subject to the limitations in 701.601, BHA is responsible for procurements related to programs and activities for its area. M/OAA is responsible for procurements that do not fall within the responsibility of other contracting activities, or that are otherwise assigned to it.

(2) *The overseas field contracting activities*. Each USAID Mission or post overseas is a contracting activity responsible for procurements related to its programs and activities, subject to the limitations in 701.601.

* * * * *

Head of the contracting activity, as used in this chapter:

(1) The heads of USAID contracting activities are listed in this paragraph (1). The limits of their contracting authority are set forth in 701.601.

(i) *USAID/Washington heads of contracting activities*. (A) Director, Bureau for Management, Office of Acquisition and Assistance; and (B) Assistant to the Administrator, Bureau for Humanitarian Assistance (BHA).

(ii) *Overseas heads of contracting activities*. Each Mission Director or principal USAID officer at post (for example, USAID Representative, USAID Affairs Officer, and similar designations).

(2) Individuals serving in the positions listed in paragraph (1) of this definition in a designated “Acting” capacity may exercise the authority delegated to that position.

* * * * *

PART 704—ADMINISTRATIVE AND INFORMATION MATTERS

■ 8. The authority citation for part 704 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

■ 9. Revise the heading of part 704 to read as set forth above.

■ 10. Add subpart 704.5, consisting of section 704.502, to read as follows:

Subpart 704.5—Electronic Commerce in Contracting

704.502 Policy.

USAID encourages the use of electronic commerce through USAID's eSign Portal located at DocuSign. The agency head has determined that the eSign Portal is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information. USAID uses Login.gov for secure sign in. USAID will accept electronic signatures in connection with contracts, modifications and any other documentation where digital signatures are authorized under the FAR.

■ 11. Add subpart 704.21, consisting of section 704.2105, to read as follows:

Subpart 704.21—Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

704.2105 Solicitation provisions and contract clause.

(a)–(c) [Reserved]

(d) *Personal services contracts*. The requirements in paragraphs (a) through (c) of FAR 4.2105 do not apply to solicitations and contracts for personal services with individuals issued in accordance with appendices D and J of this chapter.

SUBCHAPTER B—ACQUISITION PLANNING

PART 705—PUBLICIZING CONTRACT ACTIONS

■ 12. The authority citation for part 705 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O.

12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp., p. 435; 40 U.S.C. 474.

- 13. Add subpart 705.1, consisting of section 705.102, to read as follows:

Subpart 705.1—Dissemination of Information

705.102 Availability of solicitations.

In accordance with FAR 5.102(a)(5)(iii), the Senior Procurement Executive has determined that access through the Governmentwide Point of Entry is not in the Government's interest for solicitations for any contract of \$250,000 or less by an overseas contracting activity issued under the authorities in 706.302–70(b)(2) or in accordance with the requirements in FAR part 13.

Subpart 705.2—Synopsis of Proposed Contract Actions

- 14. Revise section 705.202 to read as follows:

705.202 Exceptions.

(a) [Reserved]

(b) *Agency determinations.* The head of the U.S. Agency for International Development has determined after consultation with the Administrator of the Office of Management and Budget's Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable for the following:

- (1) Contract actions described in 706.302–70(b)(1) through (3); or
- (2) A contract of \$250,000 or less by an overseas contracting activity issued in accordance with the requirements in FAR part 13.

PART 706—COMPETITION REQUIREMENTS

- 15. The authority citation for part 706 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp., p. 435; 40 U.S.C. 474.

Subpart 706.3—Other Than Full and Open Competition

- 16. Revise section 706.302–70 to read as follows:

706.302–70 Impairment of foreign aid programs.

- (a) *Authority.* (1) The authority is 40 U.S.C. 113.
- (2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

(b) *Application.* This authority may be used for:

(1) Personal services performed abroad by an individual under the authorities of section 636(a)(3) of the Foreign Assistance Act of 1961, as amended;

(2) Supplies or services with a total value of \$250,000 or less by an overseas contracting activity;

(3)(i) Supplies or services when the cognizant Assistant Administrator makes a formal written Determination and Findings (D&F) (see FAR subpart 1.7), that compliance with full and open competition procedures to procure the goods or services through one or more contract actions would impair foreign assistance objectives and would be inconsistent with the fulfillment of one or more foreign assistance programs for which the Assistant Administrator is responsible; or

(ii) Supplies or services for countries, regions, or programs for which the Administrator of USAID makes a D&F (see FAR subpart 1.7) that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of foreign assistance programs;

(4) Supplies or services awarded under 715.370–1 or 715.370–2; and

(5) A specific contract for the continued provision of highly-specialized services when an award to another contractor would result in substantial additional costs to the Government or cause unacceptable delays.

(c) *Limitations.* (1) A contract awarded using the authority in paragraph (a) of this section must be supported by a written justification and approval (J&A) meeting the requirements of FAR 6.303 and 6.304, except that a determination made under paragraph (b)(3) of this section will not be subject to the requirement for contracting officer certification or to approvals required in FAR 6.304.

(2) Proposals must be requested from as many potential offerors as is practicable under the circumstances.

(3) When using the authorities in paragraphs (b)(4) and (5) of this section the contracting officer must publicize the advance notice of the proposed contract action as required in FAR 5.201. However, when the authorities at paragraphs (b)(1) through (3) of this section are used, advance notice of proposed contract action is not required in accordance with AIDAR 705.202.

(4) The authority in paragraph (b)(3) of this section shall be used only when no other authority provided in FAR 6.302 or AIDAR 706.302 is suitable. The

specific foreign assistance objective that would be impaired must be identified and explained in a written D&F. Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written D&F, and this consultation must be reflected in the D&F. In addition, the contracting activity must prepare a J&A as required in paragraph (c)(1) of this section.

(5) Use of the authority in paragraph (b)(5) of this section for proposed follow-on contracts or modifications to extend contracts for the continued provision of highly-specialized services in excess of one year or over \$250,000 is subject to the approval of the Agency Competition Advocate. For all other extensions and follow-on contracts relying on the authority in paragraph (b)(5), the contracting officer's certification required in FAR 6.303–2(b)(12) will serve as approval.

Subchapter C—Contracting Methods and Contracting Types

PART 715—CONTRACTING BY NEGOTIATION

- 17. The authority citation for part 715 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp., p. 435.

Subpart 715.6—Unsolicited Proposals

- 18. Revise section 715.602 to read as follows:

715.602 Policy.

(a) USAID encourages the submission of unsolicited proposals that contribute new and innovative ideas that are consistent with and contribute to the accomplishment of the Agency's objectives. Potential offerors should consider the guidance in FAR 15.6 and in AIDAR 715.6 prior to preparing and submitting a formal unsolicited proposal.

(b) Unsolicited proposals will only be considered when they support USAID strategy. USAID Mission programs must be responsive to the needs of the cooperating country; projects are often designed in collaboration with the cooperating country. These factors can limit both the need for, and USAID's ability to use, unsolicited proposals.

(c) The *USAID.gov* website contains information on working with USAID and on individual Mission and Agency-wide strategies and objectives. Prospective offerors are also encouraged to review USAID's Business Forecast web page and consider responding to

USAID competitive announcements published on *sam.gov* and *grants.gov*.
 ■ 19. Revise section 715.604 to read as follows:

715.604 Agency points of contact.

(a) USAID's Bureau for Legislative and Public Affairs, Office of Program and Management Operations, manages the receipt and evaluation of unsolicited proposals. Unsolicited proposals may be submitted via: *unsolicitedproposals@usaid.gov*.

(b) Before preparing a detailed unsolicited proposal or submitting proprietary information, a prospective offeror may make preliminary contact with USAID bureaus, field missions, or other operating units to obtain information sources on USAID's strategies and objectives and other information listed in FAR 15.604 and AIDAR 715.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 719—SMALL BUSINESS PROGRAMS

■ 20. The authority citation for part 719 continues to read as follows:

Authority: 42 U.S.C. 7254, 40 U.S.C. 486(c), 42 U.S.C. 2201.

Subpart 719.2—Policies

719.271–6 [Amended]

■ 21. Amend section 719.271–6 as follows:

- a. In paragraph (a)(3), remove the period at the end of the paragraph and add “; and” in its place; and
- b. Remove and reserve paragraph (a)(4).

PART 725—FOREIGN ACQUISITION

■ 22. The authority citation for part 725 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

Subpart 725.1—Buy American Act—Supplies

■ 23. Revise section 725.170 to read as follows:

725.170 Exceptions for Foreign Assistance Act functions.

(a) In addition to the exception stated in FAR 25.103 for purchases of foreign end products for use outside the United States, Executive Order 11223, dated May 12, 1965, provides an exception for assistance functions performed under the authority of the Foreign Assistance Act.

(b) USAID regulation at 22 CFR part 228 contains generally more prescriptive geographic procurement requirements under the Foreign Assistance Act than those under the Buy American Act. As a general rule, the requirements in 22 CFR part 228 will be used in USAID program-funded awards. For operating expense-funded procurements for supplies for use in the United States, USAID applies the Buy American Act requirements.

Subpart 725.4—Trade Agreements

725.403 [Redesignated as 725.401]

- 24. Redesignate section 725.403 as section 725.401.
- 25. Revise newly redesignated section 725.401 to read as follows:

725.401 Exceptions.

FAR subpart 25.4 establishes procedures for purchases of supplies under the Trade Agreements Act of 1979 (including the World Trade Organization's Government Procurement Agreement) and the USMCA (United States-Mexico-Canada Agreement, as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to United States and Mexico) (Pub. L. 116–113) (19 U.S.C. chapter 29 (sections 4501–4732))). Consistent with these agreements, USAID operating expense-funded administrative procurements for supplies for use in the United States are subject to the procedures in FAR part 25, unless otherwise excepted in FAR subpart 25.4. USAID program-funded contracts for the purpose of providing foreign assistance are not subject to the procedures set forth in FAR subpart 25.4

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 26. The authority citation for part 731 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Subpart 731.7—Contracts with Nonprofit Organizations

■ 27. Revise section 731.770 to read as follows:

731.770 Cost principles.

(a) The Bureau for Management, Office of Acquisition and Assistance, Cost Audit Support Division, Overhead and Special Cost and Contract Close-Out

Branch (M/OAA/CAS/OCC) provides assistance to the M/OAA Director regarding the application of 2 CFR part 200, subpart E. M/OAA/CAS/OCC is responsible for liaising with other cognizant agencies; authorizing exemptions to subpart E coverage for a nonprofit organization pursuant to 2 CFR 200.401(c); and providing advice and assistance in applying the cost principles.

(b) Prior approval, as used in 2 CFR part 200, means securing the awarding agency's advance written permission to incur costs. Where an item of cost requiring prior approval is included in the award budget, approval of the budget constitutes prior approval of that cost, unless otherwise specified. Accordingly, contract budgets must include one of the following statements:

- (1) “Inclusion of any cost in the line item budget of this award does not constitute prior approval of cost items pursuant to 2 CFR part 200”; or
- (2) “In accordance with 2 CFR part 200, approval is granted to incur costs for (name specific item or items requiring prior written approval) which are included in the budget of this award.”

731.771 [Removed and Reserved]

■ 28. Remove and reserve section 731.771.

■ 29. Revise section 731.773 to read as follows:

731.773 Independent research and development costs.

The cost principle at FAR 31.205–18 applies to independent research and development costs.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 742—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 30. The authority citation for part 742 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

■ 31. The heading for part 742 is revised to read as set forth above.

Subpart 742.7—Indirect Cost Rates

■ 32. Revise section 742.770 to read as follows:

742.770 Negotiated indirect cost rate agreement.

When USAID is the cognizant Federal agency pursuant to FAR 42.003, USAID may enter into a Negotiated Indirect

Cost Rate Agreement with the contractor to establish billing rates and final indirect cost rates in accordance with FAR 42.703. The Negotiated Indirect Cost Rate Agreement is incorporated into the contract pursuant to FAR 42.703–1(b). Application of the Negotiated Indirect Cost Rate Agreement, including any adjustments thereto, will be subject to any monetary or indirect rate ceiling, obligation, limitation of cost provision, and specific cost allowance or disallowance provided for in each contract between the parties.

PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

- 33. The authority citation for part 750 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

- 34. The heading for part 750 is revised to read as set forth above.

- 35. Revise section 750.000 to read as follows:

750.000 Scope of part.

USAID is not among the agencies named in the SAFETY Act or authorized by the President under Public Law 85–804 to take actions under the SAFETY Act.

Subpart 750.71—Extraordinary Contractual Actions To Protect Foreign Policy Interests of the United States

- 36. Revise sections 750.7100 through 750.7102 to read as follows:

750.7100 Scope of subpart.

This subpart specifies the standards and the procedures relating to requests for extraordinary contractual actions under Executive Order 11223.

750.7101 Authority.

Under section 633 of the Foreign Assistance Act of 1961, 75 Stat. 454 (22 U.S.C. 2933), as amended; Executive Order 11223, dated May 12, 1965, as amended; and Executive Order 12163, dated September 29, 1979, as amended, the Administrator of the U.S. Agency for International Development has authority to provide extraordinary contractual relief.

750.7102 General policy.

Extra-contractual claims arising from foreign assistance contracts will be processed similarly to claims for extraordinary relief under FAR part 50, and in consideration of the

circumstances and authorities granted by the Foreign Assistance Act.

750.7103 [Removed and Reserved]

- 37. Remove and reserve section 750.7103.
- 38. Revise sections 750.7104 and 750.7105 to read as follows:

750.7104 Types of actions.

The types of actions that may be taken pursuant to the direction of the approving authority under the Executive Order 11223 are: contractual adjustments such as amendments without consideration, correction of mistakes, and formalization of informal commitments.

750.7105 Approving authority.

All authority to approve actions under this subpart is delegated to the M/OAA Director. The cognizant contracting officer will take appropriate contractual action pursuant to the decision of the M/OAA Director.

- 39. Amend section 750.7106–1 by revising the first three sentences to read as follows:

750.7106–1 General.

The mere fact that losses occur under a contract is not, by itself, a sufficient basis for the exercise of the authority conferred by Executive Order 11223. Whether, in a particular case, an action will protect the foreign policy interests of the United States is fact specific. Examples of the types of cases where action may be proper are set forth in 750.7106–2 through 750.7106–4. * * *

- 40. Amend section 750.7106–2 by revising paragraph (a) to read as follows:

750.7106–2 Amendments without consideration.

(a) Where an actual or threatened loss under a foreign assistance contract, however caused, will impair the productive ability of a contractor whose continued performance of any foreign assistance contract or whose continued operation as a source of supply is found to be essential to protect the foreign policy interests of the United States, the contract may be adjusted to the extent necessary to avoid such impairment to the contractor's productive ability.

* * * * *

- 41. Revise section 750.7106–3 to read as follows:

750.7106–3 Mistakes.

(a) A contract may be amended or modified to correct or mitigate the effect of a mistake, including in the following situations:

- (1) A mistake or ambiguity in the contract that results from the failure to

clearly express the agreement as understood by both parties;

(2) A mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer; and

(3) A mutual mistake as to a material fact.

(b) Amending contracts to correct mistakes with the least possible delay normally will protect the foreign policy interests of the United States by expediting the program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly. An action that can be accomplished by administrative modification or resolved using the procedures in FAR subpart 33.2 should not be resolved using the authority and procedures of this subpart.

- 42. Revise section 750.7107 to read as follows:

750.7107 Limitations upon exercise of authority.

(a) Executive Order 11223 does not provide authority for:

- (1) The award of a cost-plus-a-percentage-of-cost contract;
- (2) The payment of profit or fees in excess of applicable limitations; or
- (3) The waiver of any requirement to post a bid, payment, performance, or other bond required by law.

(b)(1) Executive Order 11223 does not authorize the issuance of a modification, unless:

- (i) With respect to cases falling within Section 4 of Executive Order 11223, the approving authority determines that the action is necessary to protect the foreign policy interests of the United States; and
- (ii) No other legal authority authorizes issuance of such modification.

(2) A modification under paragraph (b)(1) of this section must be within the limits of the amounts appropriated and the statutory contract authorization as referenced in FAR 50.102–3.

(c) No contract shall be modified unless the contractor submits a request prior to all obligations (including final payment) under the contract having been discharged.

(d) An informal commitment must not be formalized unless:

- (1) The contractor submits a written request for payment within six months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment;

(2) USAID has received the services satisfactorily performed, or has accepted property furnished in reliance on the commitment;

(3) The USAID employee alleged to have made the informal commitment has affirmatively acknowledged

responsibility for making the informal commitment in question; and

(4) USAID has taken appropriate action to prevent recurrence.

■ 43. Revise section 750.7108 to read as follows:

750.7108 Contractual requirements.

Every contract modified pursuant to this subpart shall contain:

(a) A citation of the Act and Executive Order 11223;

(b) A brief statement of the circumstances justifying the action; and

(c) With respect to cases falling within section 4 of Executive Order 11223, a statement that the action is necessary to protect the foreign policy interests of the United States.

■ 44. Revise section 750.7109–1 to read as follows:

750.7109–1 Filing requests.

A contractor seeking an adjustment under the standards set forth in 750.7106 may file a request with the cognizant contracting officer.

■ 45. Revise section 750.7109–3 to read as follows:

750.7109–3 Facts and evidence.

The contracting officer or the approving authority may, where necessary, require the contractor to furnish facts and evidence supporting the request, as described in FAR 50.103–4.

750.7110 through 750.7110–6 [Removed and Reserved]

■ 46. Remove and reserve sections 750.7110 through 750.7110–6.

SUBCHAPTER H—CLAUSES AND FORMS

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 47. The authority citation for part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

Subpart 752.2—Texts of Provisions and Clauses

752.202–1 [Amended]

■ 48. Amend section 752.202–1 by removing and reserving paragraph (c).

■ 49. Revise section 752.222–71 to read as follows:

752.222–71 Nondiscrimination.

As prescribed in 722.810(b), insert the following clause in section I of all solicitations and resulting contracts.

Nondiscrimination (May 2024)

FAR part 22 and the clauses prescribed in that part prohibit contractors performing in or recruiting from the U.S. from engaging in certain discriminatory practices. USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in its own workplace on the basis of race, color, religion, sex (including pregnancy, sexual orientation, gender identity, or transgender status), national origin, age (40 or older), physical or mental disability, genetic information, religion, marital or parental status, veteran status, membership in an employee organization, political affiliation, or involvement in protected equal employment opportunity (EEO) activity. USAID does not tolerate any type of discrimination (in any form, including harassment) of any employee or applicant for employment on any of the above-described bases.

Contractors are required to comply with the nondiscrimination requirements of the FAR. In addition, the Agency strongly encourages all its contractors (at all tiers) to develop and enforce nondiscrimination policies consistent with USAID's approach to workplace nondiscrimination as described in this clause, subject to applicable law.

(End of clause)

752.225–9 [Redesignated as 752.225–5]

■ 50. Redesignate section 752.225–9 as section 752.225–5

■ 51. Revise newly redesignated section 752.225–5 to read as follows:

752.225–5 Buy American Act-Trade Agreements Act.

The clauses prescribed by FAR 25.1101 are not generally included in USAID contracts when more stringent source requirements are stated in the contract or when inclusion is not appropriate under FAR 25.403, or AIDAR 725.403. (See Executive Order 11223, dated May 12, 1965.) The clause setting forth USAID's source restrictions is provided in 752.225–70.

752.227–14 [Amended]

■ 52. Amend section 752.227–14 as follows:

■ a. In the introductory text, remove “727.409(b)” and add “727.409(a)” in its place; and

■ b. Add the text “(End of clause)” at the end of the section.

Subpart 752.70—Texts of USAID Contract Clauses

752.7018, 752.7019, and 752.7021 through 752.7024 [Removed and Reserved]

■ 53. Remove and reserve sections 752.7018, 752.7019, and 752.7021 through 752.7024.

■ 54. Amend section 752.7028 as follows:

■ a. Revise the section heading, clause date and introductory text, and paragraphs (a), (h), and (i) of the clause; and

■ b. Add parenthetical text at the end of the section. The revisions and addition read as follows:

752.7028 Differentials and Allowances.

* * * * *

Differentials and Allowances (May 2024)

The differentials and allowances authorized in this clause apply only to U.S. employees. Any reimbursement of differentials or allowances to TCN or CCN employees under this contract is limited to separate and specific authorization(s) for identified differentials or allowances which are granted by the cognizant Assistant Administrator or Mission Director pursuant to 722.170, or by the Mission Director in conjunction with an authorized evacuation as provided in paragraph (i). A copy of such authorization shall be retained and made available as part of the contractor's records which are required to be preserved and made available by the “Examination of Records by the Comptroller General” and “Audit” clauses of this contract.

(a) *Post hardship differential.* Post hardship differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post hardship differential is paid to USAID direct-hire employees, the contractor will be reimbursed for post hardship differential paid to its employees, not to exceed the rate authorized in the Standardized Regulations (Government Civilians, Foreign Areas) Chapter 500 (except the limitation contained in Section 552, “Ceiling on Payment”) and Tables in Chapter 900, as from time to time amended. When post hardship differential is provided to regular employees of the Contractor, it will commence and continue, and be suspended or terminated, as prescribed in the Standardized Regulations Chapter 500. The Contractor will be reimbursed post hardship differential paid to short-term employees, not to exceed such payments made to USAID U.S. citizen direct-hire detailed employees in accordance with the Standardized Regulations Chapter 500, as from time to time amended.

* * * * *

(h) *Separate maintenance allowance.* Separate maintenance allowance is an allowance to assist an employee to meet the additional expenses of maintaining members of family elsewhere than at the employee's foreign post of assignment. The Contractor will be reimbursed for payments made to regular employees for a separate maintenance allowance not to exceed that made to USAID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(i) *Payments during evacuation.* The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedures for the payment of compensation, post differential, and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons, or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director, the Contractor will be reimbursed for payments made to employees and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended. In conjunction with an evacuation authorization, the Mission Director may also specifically authorize payments of identified differentials or allowances for TCN or CCN employees.

* * * * *

(End of clause)

752.7032 [Amended]

■ 55. Amend section 752.7032 as follows:

- a. Remove the word “advanced” and add in its place the word “advance”;
- b. Remove the words “or telegram or similar device”; and
- c. Add the text “(End of clause)” at the end of the section.

752.204–2, 752.204–70, 752.204–72, 752.219–8, 752.222–70, 752.225–70, 752.227–70, 752.228–3, 752.228–7, 752.228–9, 752.228–70, 752.231–71, 752.232–70, 752.236–70, 752.242–70, 752.245–71, 752.247–70, 752.252–1, 752.252–2, 752.252–70, 752.7001, 752.7003, 752.7004, 752.7005, 752.7006, 752.7007, 752.7008, 752.7009, 752.7010, 752.7011, 752.7012, 752.7015, 752.7025, 752.7029, and 752.7030 [Amended]

■ 56. Further amend 48 CFR part 752 by adding the text “(End of clause)” at the end of the following sections:

- a. 752.204–2;
- b. 752.204–70;
- c. 752.204–72;
- d. 752.219–8;
- e. 752.222–70;
- f. 752.225–70;
- g. 752.227–70;
- h. 752.228–3;
- i. 752.228–7;
- j. 752.228–9;
- k. 752.228–70;
- l. 752.231–71;
- m. 752.232–70;
- n. 752.236–70;
- o. 752.242–70;
- p. 752.245–71;
- q. 752.247–70;
- r. 752.252–1;
- s. 752.252–2;
- t. 752.252–70;
- u. 752.7001;
- v. 752.7003;

- w. 752.7004;
- x. 752.7005;
- y. 752.7006;
- z. 752.7007;
- aa. 752.7008;
- bb. 752.7009;
- cc. 752.7010;
- dd. 752.7011;
- ee. 752.7012;
- ff. 752.7015;
- gg. 752.7025;
- hh. 752.7029; and
- ii. 752.7030.

Deborah Broderick,

Acting Chief Acquisition Officer.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224–0053; RTID 0648–XD668–X]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2024 total allowable catch of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2024, through 1200 hours, A.l.t., June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7416.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by

U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2024 Pacific cod total allowable catch (TAC) apportioned to catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 3,867 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023) and inseason adjustment (88 FR 88840, December 26, 2023).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2024 Pacific cod TAC apportioned to catcher vessels using trawl gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 3,767 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA.

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

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 12, 2024.

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

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

Dated: January 17, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–01234 Filed 1–18–24; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XD662]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the annual 2024 Pacific cod total allowable catch (TAC) allocated to AFA trawl catcher/processors in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2024, through 1200 hours, A.l.t., November 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Adam Zaleski, 907–586–7228.

SUPPLEMENTARY INFORMATION:

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

The annual apportionment of the 2024 Pacific cod TAC allocated to AFA trawl catcher/processors in the BSAI is 3,201 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023) and inseason adjustment (88 FR 88836, December 26, 2023).

In accordance with § 679.20(d)(1)(i) and § 679.20(d)(1)(ii)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the annual 2024 Pacific cod TAC allocated to AFA trawl catcher/processors in the BSAI is necessary to account for the incidental catch in other anticipated fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 3,201 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting

directed fishing for Pacific cod by AFA trawl catcher/processors in the BSAI.

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

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by AFA trawl catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 10, 2024.

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

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

Dated: January 18, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–01254 Filed 1–18–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 15

Tuesday, January 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-0035; Project Identifier MCAI-2023-00986-A]

RIN 2120-AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2010-18-06, which applies to all GA8 Airvan (Pty) Ltd Model GA8 and GA8-TC320 airplanes. AD 2010-18-06 requires inspections and a minor design change to the forward slide of the cargo door with corrective action as necessary. Since the FAA issued AD 2010-18-06, the Civil Aviation Safety Authority (CASA), which is the aviation authority for Australia, superseded the previous CASA Australia AD to incorporate more detailed inspections and additional modifications as specified in updated service information published by the manufacturer. This proposed AD was prompted by reports of in-flight cargo door separation. This proposed AD would require inspections and rework (modifications) of the cargo door with corrective action as necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by March 8, 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](https://www.regulations.gov). Follow the instructions for submitting comments.
- **Fax:** (202) 493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

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

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0035; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI) any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact GA8 Airvan (Pty) Ltd, PO Box 881, Morwell, Victoria 3840, Australia; phone: +61 03 5172 1200; website: gippsaero.com.au; email: TECHPUBS@gippsaero.com.au.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329-4059; email: doug.rudolph@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2024-0035; Project Identifier MCAI-2023-00986-A" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2010-18-06, Amendment 39-16419 (75 FR 52253, August 25, 2010) (AD 2010-18-06), for all GA8 Airvan (Pty) Ltd Model GA8 and GA8-TC320 airplanes. AD 2010-18-06 was prompted by MCAI originated by CASA, which is the aviation authority for Australia. CASA Australia issued CASA Australia AD AD/GA8/3 Amdt 2, dated August 11, 2010 (CASA Australia AD/GA8/3 Amdt 2) to correct an unsafe condition identified as excessive wear in the forward cargo door slide, which could result in an in-flight separation of the cargo door, with possible loss of control of the airplane. CASA Australia AD AD/GA8/3 Amdt 2 was issued to require the actions in service information updated by the manufacturer to remove any ambiguities in the previous revision and provide an improved inspection method and a minor design change to the forward slide of the cargo door (inclusion of a slide backing plate, castellated nut, and split pin).

AD 2010-18-06 requires doing all of Action 1 (measuring the groove width of

the forward cargo door slide and if it exceeds 0.145 inch at any point along the slide, or is cracked, installing a new slider assembly) and Action 2 (inspecting wear of the forward slide of the cargo door and doing applicable corrective action steps specified in Action 1) of GippsAero Pty. Ltd. Mandatory Service Bulletin SB-GA8-2005-23, Issue 3, dated August 5, 2010. The FAA issued AD 2010-18-06 to address excessive wear in the forward cargo door slide.

Actions Since AD 2010-18-06 Was Issued

Since the FAA issued AD 2010-18-06, CASA Australia superseded CASA Australia AD AD/GA8/3 Amdt 2 and issued CASA Australia AD AD/GA8/3 Amdt 3, dated August 18, 2023 (CASA Australia AD AD/GA8/3 Amdt 3) (also referred to as the MCAI). The MCAI states that inspections revealed cases of excessive wear in the forward slide of the cargo door. Excessive wear in the forward slide of the cargo door may result in the cargo door separating from the airplane in flight with potentially catastrophic results. The MCAI requires accomplishing the actions specified in GippsAero Service Bulletin SB-GA8-2005-23, Issue 7, dated May 30, 2023 (GippsAero Service Bulletin SB-GA8-2005-23, Issue 7). This service bulletin includes procedures for revised inspections of the door mechanism, installing a stop on the forward slide of the cargo door and reworking the door slide to suit (accommodate) the track stop installation. Depending on the findings of the inspections, additional actions might be necessary including reworking the door mechanism pivot, upgrading the door operating rod, or fitting a door handle with an integral stop.

The FAA is proposing this AD to address excessive wear in the forward slide of the cargo door. The unsafe condition, if not addressed, could result in the cargo door separating from the

airplane during flight, with potential loss of control of the airplane. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0035.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GippsAero Service Bulletin SB-GA8-2005-23, Issue 8, dated October 11, 2023 (GippsAero SB-GA8-2005-23, Issue 8). This service information specifies procedures for installing a backing plate on the forward slide of the cargo door; inspecting the forward slide of the cargo door for excessive wear; inspecting the cargo door latching mechanism for contact between the operating rod and door handle pivot post, inspecting the threaded studs and rod ends at both ends of the operating rod for bending, and checking the cargo door handle engagement with the catch; reworking the cargo door handle pivot post; reworking the door operating rod; inspecting the door handle to determine if an integrated stop is installed and checking for excessive play; and inspecting the center rail of the cargo door to determine if an aft stop is installed, installing an aft stop, and reworking the center rail of the cargo door to accommodate the track stop.

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

FAA’s Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop

on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2010-18-06. This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under “Differences Between this Proposed AD and the MCAI.”

Differences Between This Proposed AD and the MCAI

The MCAI applicability is Gippsland Aeronautics Model GA8 Series airplanes, all serial numbers. The applicability in this proposed AD would be GA8 Airvan (Pty) Ltd Model GA8 and GA8-TC320 airplanes because the FAA type certificate specifies GA8 Airvan (Pty) Ltd instead of Gippsland Aeronautics and specifies Model GA8 and GA8-TC320 airplanes instead of Model GA8 Series airplanes.

The MCAI requires doing the actions in Gippsland Aeronautics mandatory service bulletin SB-GA8-2005-23 Issue 7, dated May 30, 2023. This proposed AD would require doing the actions in GippsAero SB-GA8-2005-23, Issue 8. After the MCAI was published, the manufacturer issued GippsAero SB-GA8-2005-23, Issue 8, which was revised to provide clarification regarding the actions and compliance schedule. The title page of GippsAero SB-GA8-2005-23, Issue 8, specifies GippsAero instead of Gippsland Aeronautics.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 61 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD. The corresponding letter and number in parenthesis refer to the specific paragraph in GippsAero SB-GA8-2005-23, Issue 8.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installing forward cargo door slide backing plate (A1).	0.50 work-hour × \$85 per hour = \$42.50.	\$175	\$217.50	\$13,267.50.
Inspecting forward cargo door slide wear (A2).	0.25 work-hour × \$85 per hour = \$21.25 per inspection cycle.	0	21.25 per inspection cycle	1,296.25 per inspection cycle.
Inspecting cargo door latching mechanism (B1).	1 work-hour × \$85 per hour = \$85 per inspection cycle.	0	85 per inspection cycle	5,185 per inspection cycle.
Inspecting cargo door handle and inspecting for excessive play (C).	0.75 work-hour × \$85 per hour = \$63.75.	0	63.75	3,88.75.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting cargo door center rail (D1).	1 work-hour × \$85 per hour = \$85.	0	85	5,185.

The FAA estimates the following costs to do any necessary actions that would be required based on the results of the proposed inspections. The agency

has no way of determining the number of airplanes that might need these actions. The corresponding letter and number in parenthesis refer to the

specific paragraph in GippsAero SB—GA8–2005–23, Issue 8.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspecting/replacing forward cargo door slide (A1, Steps 2 through 4), corrective action for (A2).	0.50 work-hour × \$85 per hour = \$42.50	\$175	\$217.50
Reworking cargo door pivot (B2) and reworking/replacing door operating rod assembly (B3).	2 work-hours × \$85 per hour = \$170	630	800
Replacing door handle/handle bush (C)	1 work-hour × \$85 per hour = \$85	267	352
Replacing cargo door center rail/slide-center and backing plate (D1) and reworking cargo door center rail and backing plate (D2).	2 work-hours × \$85 per hour = \$170	152	322

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive 2010–18–06, Amendment 39–16419 (75 FR 52253, August 25, 2010); and
 - b. Adding the following new airworthiness directive:

GA 8 Airvan (Pty) Ltd: Docket No. FAA–2024–0035; Project Identifier MCAI–2023–00986–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 8, 2024.

(b) Affected ADs

This AD replaces AD 2010–18–06, Amendment 39–16419 (75 FR 52253, August 25, 2010).

(c) Applicability

This AD applies to GA 8 Airvan (Pty) Ltd Model GA8 and GA8–TC320 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5230, Cargo/Baggage Doors.

(e) Unsafe Condition

This AD was prompted by reports of in-flight cargo door separation. The FAA is issuing this AD to detect and correct excessive wear in the forward cargo door slide, which could result in an in-flight separation of the cargo door, with possible loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Do the applicable actions specified in Table 1 to paragraph (g) of this AD at the times in Table 1 to paragraph (g) of this AD, in accordance with the Accomplishment Instructions of GippsAero Service Bulletin SB–GA8–2005–23, Issue 8, dated October 11, 2023 (GippsAero SB–GA8–2005–23, Issue 8).

TABLE 1 TO PARAGRAPH (g)

Paragraphs in accomplishment instructions of GippsAero SB-GA8-2005-23, Issue 8	Action	Compliance time
12.1, A1, steps 1 and 2, for backing plate inspection, except where Figure 1 in step 1 specifies to remove and discard the vertical bolt, remove the vertical bolt from service. Steps 3 through 7, if a backing plate is not installed.	Inspect for the existence of a backing plate on the forward slide of the cargo door. If a backing plate is not installed, install a backing plate on the forward slide of the cargo door, measure the groove width of the forward slide, and replace the slide if it exceeds 0.145 inch at any point or is cracked or worn beyond limits.	Inspect within 50 hours time-in-service (TIS) or 2 months after the effective date of this AD, whichever occurs first. Install, measure, and replace before further flight after the inspection.
12.2, A2, steps 1 and 2 for the inspection 12.2, A2, step 3 or 4, and 12.1, A1, steps 2 through 4, for the follow-on inspection and replacement.	Inspect for wear of the forward slide of the cargo door by inserting a slide gauge or feeler gauge to measure the clearance between the forward slide and the cargo door track. If a gap is found, measure the groove width of the forward slide and replace the slide if the groove width exceeds 0.145 inch at any point or is cracked or worn beyond limits.	Inspect for wear within 100 hours TIS or 2 months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or 12 months, whichever occurs first after the most recent inspection. Measure the groove width and replace the slide before further flight after each inspection as necessary.
12.3, B1, steps 1 through 6 for the inspections 12.3, B1, steps 2, 3i, and 3ii; 12.4, B2, steps 1 through 5; and 12.5, B3, steps 1 through 12 for the corrective actions.	Inspect the cargo door mechanism for contact between the operating rod and cargo door handle pivot post, inspect the threaded studs and rod ends at both ends of the operating rod for bending, and inspect the cargo door handle engagement with the catch. Perform all applicable corrective actions.	Inspect within 50 hours TIS or 2 months after the effective date of this AD, whichever occurs first and thereafter at intervals not to exceed 100 hours TIS or 12 months, whichever occurs first after the most recent inspection. Perform all applicable corrective actions before further flight.
12.6, C, steps 1 through 6	Inspect the cargo door handle to determine if an integrated stop is installed and if an integrated stop is not installed, install a cargo door handle with an integrated stop. Inspect the cargo door handle for beyond normal play and replace the handle bush if the door handle has beyond normal play.	Within 150 hours TIS or 4 months after the effective date of this AD, whichever occurs first. Perform the installation and replacement, as necessary, before further flight after the inspection.
12.7, D1, steps 1 through 10 for the center rail cargo door inspection and installation. 12.8, D2, steps 1 through 2, for any necessary follow-on rework.	Inspect the center rail of the cargo door to determine if a center rail aft stop is installed and if a center rail aft stop is not installed, install an aft stop before further flight.	Within 50 hours TIS or 2 months after the effective date of this AD, whichever occurs first.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (i)(2) of this AD or email to: 9-AVS-AIR-730-AMOC@faa.gov. If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local Flight Standards District Office/certificate holding district office.

(i) Additional Information

(1) Refer to Civil Aviation Safety Authority (CASA) Australia AD AD/GA8/3 amdt 3, dated August 18, 2023, for related information. This CASA Australia AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0035.

(2) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite

410, Westbury, NY 11590; phone: (816) 329-4059; email: doug.rudolph@faa.gov.

(j) Material Incorporated by Reference

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

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

(i) GippsAero Service Bulletin SB-GA8-2005-23, Issue 8, dated October 11, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact GA8 Airvan (Pty) Ltd, PO Box 881, Morwell, Victoria 3840, Australia; phone: +61 03 5172 1200; website: gippsaero.com.au; email: TECHPUBS@gippsaero.com.au.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110.

(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 January 12, 2024.

Victor Wicklund,

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

[FR Doc. 2024-01018 Filed 1-22-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1, 54, and 301**

RIN 1545–BQ98

DEPARTMENT OF LABOR**Employee Benefits Security Administration****29 CFR Parts 2510, 2520, and 2550**

RIN 1210–AC09

PENSION BENEFIT GUARANTY CORPORATION**29 CFR Parts 4000, 4007, 4010, 4041, 4041A, 4043, 4050, 4062, 4063, 4204, 4211, 4219, 4231, 4245, 4262, and 4281**

RIN 1212–AB58

Request for Information—SECURE 2.0 Section 319—Effectiveness of Reporting and Disclosure Requirements

AGENCY: Internal Revenue Service, U.S. Department of the Treasury; Employee Benefits Security Administration, U.S. Department of Labor; Pension Benefit Guaranty Corporation.

ACTION: Request for information.

SUMMARY: The Department of the Treasury (Treasury Department), the Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor (Labor Department), and the Pension Benefit Guaranty Corporation (PBGC) are publishing this Request for Information to develop a public record for purposes of the directive in the SECURE 2.0 Act of 2022 (SECURE 2.0). Specifically, this Request for Information addresses section 319 of SECURE 2.0, requiring that these agencies review the existing reporting and disclosure requirements for certain retirement plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the Internal Revenue Code (Code) that are applicable to each agency. Following this review, the agencies are to report to Congress, no later than December 29, 2025, concerning the effectiveness of the reporting and disclosure requirements. The report will include recommendations on consolidating, simplifying, standardizing, and improving such requirements with the dual goals of reducing compliance burdens and ensuring plan participants' and beneficiaries' timely receipt and better understanding of the information they need to monitor their plans,

prepare for retirement, and get the benefits they have earned. The report will also consider how participants and beneficiaries are providing preferred contact information, the methods by which plan sponsors and plans are furnishing disclosures, and the rate at which participants and beneficiaries are receiving, accessing, understanding, and retaining disclosures. Consistent with the directive in section 319 of SECURE 2.0, this Request for Information focuses generally on the overall effectiveness of the reporting and disclosure frameworks in ERISA and the Code. Responses to this Request for Information will inform the agencies in preparation of the required report to Congress and in any future action taken by the agencies to enhance the effectiveness of existing requirements.

DATES: To be assured consideration, comments must be received at one of the following addresses no later than April 22, 2024.

ADDRESSES: Written comments, identified by RIN 1210–AC09, may be submitted to one of the addresses specified below. Any comment that is submitted will be shared with the Department of the Treasury, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation. Please do not submit duplicates.

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Please address to “Attention: Request for Information—SECURE 2.0 Section 319—Effectiveness of Reporting and Disclosure Requirements.” Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, at www.regulations.gov, on the Department of Labor's website at www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments, and at the Public Disclosure Room, EBSA, U.S. Department of Labor, Suite N–1515, 200 Constitution Avenue NW, Washington, DC 20210. Comments may also be accessed from PBGC's website at www.pbgc.gov.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT:

Rebecca Davis, Office of Regulations and Interpretations, EBSA, Labor Department, (202) 693–8500. Jamie Dvoretzky, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (CC:EEE)), IRS, Treasury Department, at (202) 317–4102. David Simonetti, Legal Policy Division, Office of the General Counsel, PBGC, (202) 229–4362.

SUPPLEMENTARY INFORMATION:**I. Background**

SECURE 2.0 includes provisions amending ERISA and the Code and requiring the Labor Department, the Treasury Department, and PBGC (each an Agency and, together, the Agencies) to undertake specified statutory, regulatory, and review requirements and, in some cases, to report to Congress based on their findings.¹ A number of these provisions relate to the reporting and disclosure requirements of ERISA and the Code. For example, on August 11, 2023, the Labor Department published a separate request for information focusing on ten specific sections of SECURE 2.0 that amend ERISA or otherwise impact, directly or indirectly, ERISA's reporting and disclosure requirements.² At that time, the Labor Department stated its intention to move forward in the short term with a separate initiative, in coordination with the Treasury Department and PBGC, to formally solicit input from stakeholders in response to section 319 of SECURE 2.0.

Section 319 of SECURE 2.0 includes a wide-ranging directive to the Agencies to review each Agency's existing reporting and disclosure requirements under the Code and ERISA for retirement plans specified in section 319 of SECURE 2.0.³ After this review,

¹ The SECURE 2.0 Act of 2022, Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022) (SECURE 2.0).

² 88 FR 54511 (Aug. 11, 2023). Not all of the SECURE 2.0 provisions that affect ERISA's reporting and disclosure framework are covered in this RFI. For example, the changes to ERISA's audit requirements made by section 345 of SECURE 2.0 were implemented through a rulemaking relating to annual reporting requirements under ERISA. 88 FR 11793 (Feb. 24, 2023).

³ Section 319(a)(1)–(2) of SECURE 2.0 excludes health and welfare plans from the scope of the Agencies' review (directing agency heads to review the reporting and disclosure requirements of pension plans (as defined in ERISA section 3(2)) covered by title I of ERISA and applicable qualified retirement plans (as defined in Code section 4974(c), without regard to Code section 4974(c)(4) and (5), including a plan described in Code section 401(a) which includes a trust exempt from tax under Code section 501(a), an annuity plan described in Code section 403(a), and an annuity contract described in section Code section 403(b).

and in consultation with a balanced group of participant and employer representatives, the Agencies are to report to Congress on the effectiveness of these reporting and disclosure requirements, including recommendations to consolidate, simplify, standardize, and improve such requirements. This review is to be expansive in scope. In the Agencies' view, the review calls for generalized questions about how plans can (a) efficiently furnish valuable information to the Agencies, and (b) best communicate information to workers and former employees, who have widely varying backgrounds and expertise, that would enable them to effectively obtain, understand, and use information about their plans and to plan for retirement. The overarching theme of "effectiveness" will be explored in the context of both the reporting and disclosure requirements under the jurisdiction of the three Agencies. The public is directed to www.irs.gov/retirement-plans/irc-notice-and-reporting-requirements-affecting-retirement-plans (Treasury Department), www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/reporting-and-disclosure-guide-for-employee-benefit-plans.pdf (Labor Department), and www.pbgc.gov (PBGC) to review the principal requirements of each Agency relating to reporting and disclosure under ERISA or the Code with respect to retirement plans.

ERISA and the Code require that plans furnish information to participants and beneficiaries, in some cases on a regular and recurring basis (e.g., pension benefit statements,⁴ Code section 401(k)(12) safe harbor notices,⁵ and annual funding notices⁶) and in other cases when triggered by plan or participant actions (e.g., black-out notices,⁷ Code section 402(f) notices,⁸ and notices of intent to terminate⁹). For purposes of this Request for Information (RFI), the term "disclosure" includes notices, statements, and other documents and refers generally to the furnishing of information to participants and beneficiaries of retirement plans as

required by ERISA or the Code or regulations issued by the Agencies thereunder.

The term "reporting" is used in this RFI to refer to the furnishing of information, or "reports," by plans to the Agencies, as required by ERISA or the Code, or regulations issued by the Agencies thereunder. The Agencies do not consider information that is submitted to the Agencies in connection with an audit, examination, investigation, or enforcement action to be "reports" for purposes of section 319. The Agencies also do not consider information that is furnished on a voluntary basis to an Agency to obtain favorable treatment, or information relating to financial transactions that is not retirement-plan-specific information to be "reports" for purposes of section 319. Examples of information not considered to be "reports" include:

- Information that is submitted as a condition of an individual exemption under ERISA section 408(a).
- Information that is submitted to the Agencies to receive financial assistance or benefits.
- Information that is submitted to the Agencies in connection with requests for determination or opinion letters, advisory opinions, information letters, private letter rulings, closing agreements, voluntary compliance statements under the Employee Plans Compliance Resolution System, or relief pursuant to the Voluntary Fiduciary Correction Program or the Delinquent Filer Voluntary Compliance Program.
- Information that is submitted to the Agencies and that is not specific to retirement plans, such as reporting that may be required of financial institutions holding foreign investments.

The Agencies recognize that a key component of retirement plans' reporting to the Agencies is the Form 5500 Annual Report. However, for purposes of this RFI, the Agencies are primarily focusing, and requesting comments, on reporting requirements other than the Form 5500 Annual Report. Apart from the context of SECURE 2.0 section 319, the Agencies have an annual process for soliciting feedback from the public on the Form 5500 Annual Report and reviewing and improving the effectiveness of that form in response to such feedback. The Agencies therefore pursue the overarching goal of the review required by section 319—improving the effectiveness of reporting on the Form 5500 Annual Report—every year. The Agencies urge commenters, when responding to this RFI, to focus on information and analyses that look

beyond the requirements of the Form 5500 Annual Report.

In addition to information received and points of view expressed by public commenters in response to this RFI, the Agencies' review for purposes of the report to Congress may include feedback from the public provided as part of prior efforts of the Agencies and others to assess and improve the effectiveness of the reporting and disclosure requirements of the Code and ERISA. The Labor Department, for example, as recently as 2019, published a request for information (the DOL 2019 RFI), which solicited information, data, and ideas from the public on measures that the Labor Department could take to improve the effectiveness of plan disclosures, especially for the design and content of ERISA disclosures.¹⁰ Similarly PBGC, in 2017, published a request for information (the PBGC 2017 RFI), which, in part, solicited information and suggestions from the public for improving reporting requirements.¹¹

Parties external to the Agencies also have studied whether and how the reporting and disclosure frameworks of ERISA and the Code may be improved. The U.S. Government Accountability Office (GAO) has issued a number of reports in recent years on this topic, working with the Agencies to review reporting and disclosure requirements in different contexts.¹² The Labor Department's ERISA Advisory Council has also analyzed reporting- and disclosure-related topics in certain years, in some cases providing testimony and recommendations to assist the Labor Department's efforts.¹³ In addition, the Internal Revenue

¹⁰ 84 FR 56894, 56908 (Oct. 23, 2019).

¹¹ 82 FR 34619, 34620 (July 26, 2017).

¹² GAO—14—92, Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved (Nov. 2013); GAO—21—357, 401(k) Retirement Plans: Many Participants Do Not Understand Fee Information, but DOL Could Take Additional Steps to Help Them (July 2021); GAO—20—541, Retirement Security: DOL Could Better Inform Divorcing Parties About Dividing Savings (July 2020); GAO—19—179, Retirement Savings: Additional Data and Analysis Could Provide Insight into Early Withdrawals (Mar. 2019); GAO—18—111SP, The Nation's Retirement System: A Comprehensive Re-evaluation is Needed to Better Promote Future Retirement Security (Oct. 2017).

¹³ The ERISA Advisory Council (established under ERISA section 512) is comprised of 15 members of the public representing employee organizations, employers, and the general public. The Council holds public meetings, advises the Secretary of Labor, and submits annual reports detailing their recommendations to the Labor Department, including on the topic of reporting and disclosure. See, e.g., ERISA Advisory Council Report, Mandated Disclosure for Retirement Plans—Enhancing Effectiveness for Participants and Sponsors (Nov. 2017); ERISA Advisory Council Report, Successful Plan Communications for Various Population Segments (Nov. 2013).

but excluding plans described in Code section 408(a) or (b) and eligible plans described in Code section 457(b)).

⁴ ERISA section 105; 29 U.S.C. 1025.

⁵ Code section 401(k)(12); 26 U.S.C. 401(k)(12); 26 CFR 1.401(k)—3(d).

⁶ ERISA section 101(f); 29 U.S.C. 1021(f); 29 CFR 2520.101—5.

⁷ ERISA section 101(i); 29 U.S.C. 1021(i); 29 CFR 2520.101—3.

⁸ Code section 402(f); 26 U.S.C. 402(f); 26 CFR 1.402(f)—1.

⁹ ERISA section 4041(a)(2); 29 U.S.C. 1341; 29 CFR 4041.23.

Service Advisory Council (IRSAC) provides recommendations to the IRS on reporting issues. The Agencies are confident that use of these resources, together with feedback from public commenters pursuant to this RFI, will facilitate the preparation of a comprehensive, insightful, and instructive report to Congress on the effectiveness of reporting and disclosure requirements.

II. Request for Information—SECURE 2.0 Section 319—Effectiveness of Reporting and Disclosure Requirements

The purpose of this RFI, as explained in Part I, is to obtain input from the public on the effectiveness of the reporting and disclosure requirements of ERISA and the Code that the Agencies can consider in preparing the required report to Congress. Responses to this RFI also may be used as part of the public record for any future action taken by the Agencies to enhance such effectiveness. The Agencies invite comments and relevant data from all interested stakeholders. Commenters need not answer every question, but are encouraged to identify, by number, each question addressed. The Agencies request comments no later than 90 days from the date of publication of this document in the **Federal Register**, a timeframe that the Agencies believe is adequate for commenters to review the RFI and provide considered and timely responses.

A. Disclosure to Plan Participants and Beneficiaries

The effectiveness of required notices and disclosures may be measured from different perspectives, including that of the retirement plan participants and beneficiaries who are the intended recipients of these disclosures and that of the plans and plan sponsors that provide disclosures. Section 319 of SECURE 2.0 acknowledges the importance of both perspectives by directing the Agencies to analyze ways to consolidate, simplify, standardize, and improve such requirements, so as to achieve the dual goals of “simplify[ing] reporting for, and disclosure from, [retirement] plans” and ensuring that “participants and beneficiaries timely receive and better understand the information they need to monitor their plans, plan for retirement, and obtain the benefits they have earned.” The questions in Part 1 of this Section A are primarily intended to elicit information about disclosures from the perspective of participants and beneficiaries. The questions in Part 2 of this Section A are primarily aimed at better understanding the perspective of plans and plan

sponsors on furnishing required disclosures. The Agencies understand that the distinction between these perspectives will not always be clear-cut, but nonetheless encourage commenters to consider the issues raised in this RFI from both perspectives when possible. Because plan officials and delegees (including plan fiduciaries, plan administrators, service and investment providers, and others) exercise important responsibilities in connection with plans’ reporting and disclosure obligations, the Agencies’ references in this RFI to “plans” include, unless otherwise specified, any such plan officials or delegees, to the extent they are responsible for, or are employed or hired to perform duties associated with, collecting and consolidating information and data and preparing and furnishing required notices and disclosures.

ERISA and the Code require plans to furnish information to participants and beneficiaries about the features of their plans (e.g., eligibility requirements, contribution limitations, the availability of plan loans and distribution options) and plan benefits and rights under applicable law. Some disclosures are furnished on a regular and recurring basis, and others when triggered by plan or participant actions. For an individual participant or beneficiary, the number of disclosures that will be received depends on a number of factors, including the type of plan, its specific features, and whether certain actions are taken by the participant or beneficiary. One of the most significant disclosures under ERISA is the summary plan description (SPD). The SPD is the primary resource informing participants and beneficiaries about their plan and how it operates—an “owner’s manual” for the plan.¹⁴ Other prominent disclosures under ERISA and the Code include pension benefit statements,¹⁵ ERISA’s comparative investment chart,¹⁶ Code section 401(k)(12) safe harbor notices,¹⁷ defined benefit plan annual funding notices,¹⁸ black-out

notices,¹⁹ Code section 402(f) notices,²⁰ and notices of intent to terminate.²¹

1. Plan Participants and Beneficiaries—Receipt and Comprehension of Required Disclosures

Question 1. Number of required disclosures.

Is the effectiveness of required disclosures from the Agencies affected by the number of notices and disclosures that are furnished to participants and beneficiaries each plan or calendar year (e.g., annual notices and quarterly benefit statements) and, if so, how? Similarly, is the effectiveness of disclosures affected by the number of notices and disclosures that are triggered by certain events (e.g., individual statements of deferred vested benefits²²), including when plans are required to furnish notices upon request from a participant or beneficiary? In your view, what is the relative significance of the required disclosures, are participants and beneficiaries able to recognize the significance of each notice or disclosure, and does this ability influence your view on how many disclosures should be required or whether certain disclosures are more or less effective? If you believe that the number of notices and disclosures is too high, what steps could the Agencies take to reduce the number of disclosures without sacrificing participants’ and beneficiaries’ receipt of important information? To the extent there are concerns with the number of disclosures, to what extent could these concerns be mitigated by combining multiple disclosures into a single mailing or delivery, or by consolidating information that currently must be furnished in multiple disclosures into a single disclosure? Are there specific disclosures, or specific information, that lend themselves to such a combination or consolidation, and, if so, why? For example, as explained in Q&A–8 of

¹⁹ ERISA section 101(i); 29 U.S.C. 1021(i); 29 CFR 2520.101–3 (notice of a temporary suspension or restriction on the ability of participants to direct plan investments, obtain loans, or take distributions).

²⁰ Code section 402(f); 26 U.S.C. 402(f); 26 CFR 1.402(f)–1 (written explanation provided to a recipient of an eligible rollover distribution).

²¹ ERISA section 4041(a)(2); 29 U.S.C. 1341; 29 CFR 4041.23. In the event a defined benefit plan is terminated by a standard or distress termination, the plan administrator must provide participants, beneficiaries of deceased participants, alternate payees under qualified domestic relations orders, employee organizations representing participants, and PBGC (but only in the case of a distress termination), a written notice of intent to terminate (Form 500 for a standard termination, or Form 600 for a distress termination) at least 60 days, and no more than 90 days, before the proposed termination date.

²² Code section 6057(e); 26 U.S.C. 6057(e).

¹⁴ 29 CFR 2520.102–3.

¹⁵ ERISA section 105; 29 U.S.C. 1025 (periodic statements of a participant’s individual account balance or plan benefits).

¹⁶ 29 CFR 2550.404a–5 (annual comparative chart of fee, historical return, and other information about investment options in a participant-directed individual account plan).

¹⁷ Code section 401(k)(12); 26 U.S.C. 401(k)(12); 26 CFR 1.401(k)–3(d) (notice describing eligible employees’ rights and obligations under a safe harbor section 401(k) plan).

¹⁸ ERISA section 101(f); 29 U.S.C. 1021(f); 29 CFR 2520.101–5 (provides basic information about the status and financial condition of a defined benefit pension plan).

Department of Labor Field Assistance Bulletin No. 2008–03, the Labor Department, Treasury Department, and the IRS previously coordinated to ensure that plan sponsors could comply with the notice requirements of Code sections 401(k)(13)(E) (relating to Qualified Automatic Contribution Arrangements) and 414(w)(4) (relating to Eligible Automatic Contribution Arrangements) and ERISA sections 404(c)(5) (relating to Qualified Default Investment Alternatives) and 514(e)(3) (relating to preemption for Automatic Contribution Arrangements) with a single, stand-alone document (although plan sponsors are not required to combine those notices). Further, for plan sponsors that wish to combine those notices, the Labor Department, Treasury Department, and the IRS previously provided a sample notice that may be used to help a plan sponsor satisfy those notice content requirements. As another example, see § 54.4980F–1, Q&A–9(g)(3), in which a plan is treated as providing a section 204(h) notice if the plan administrator provides one of the notices listed in § 54.4980F–1, Q&A–9(g)(3)(ii) and meets the content and timing requirements for that notice.

Question 2. Timing of required disclosures.

Do the timing requirements for when certain disclosures must be furnished increase or decrease the likelihood that participants will pay attention to them? Should changes be made to when information is disclosed to participants and, if so, how? For example, to what extent would it be beneficial for plans to harmonize timing requirements to specific points in time corresponding to participants' major life milestones or events? Explain how such changes could be implemented and how they would enhance the likelihood that participants would pay attention to the disclosure or disclosures or otherwise improve the disclosure experience.

Question 3. Content of required disclosures.

Is there duplicative, redundant, stale, or inconsistent information disclosed to participants under current rules promulgated under ERISA or the Code? If so, which information? Why do you consider that information duplicative, redundant, stale, or inconsistent? Do either ERISA or the Code, or regulations issued thereunder, currently require disclosure of any information that is unhelpful or outmoded, for example, due to the passage of time or changes in the regulatory, business, or technological environment? If so, what information and why is it unhelpful or outmoded? Is there information that

should be disclosed instead of the unhelpful or outmoded information? If so, what information? How could it be improved? In analyzing the content of required disclosures, commenters are reminded to consider the objective stated in SECURE 2.0 section 319, that participants and beneficiaries be furnished the “information they need to monitor their plans, plan for retirement, and obtain the benefits they have earned.”

Question 4. Comprehension of information furnished in required disclosures.

Section 319 of SECURE 2.0 requires that the Agencies' report to Congress include an analysis of “the rate at which participants and beneficiaries are receiving, accessing, understanding, and retaining disclosures.” As to individuals' understanding, the Agencies are interested in commenters' views on whether and how the length of specific disclosures, and the complexity of the information disclosed, may impact individuals' understanding of the disclosures. Besides length, what other factors affect comprehension of the information contained in notices and disclosures or, possibly, whether participants and beneficiaries even try to read and understand disclosures? Does review and comprehension of participants and beneficiaries vary among: (1) industries; (2) individuals of different ages, genders, education levels, socio-economic classes, place of living, impairments or disabilities, or other demographic characteristics; or (3) different types of disclosures? To what degree does the presentation, delivery, and design of disclosures (as opposed to their written content) impact the likelihood that participants and beneficiaries will read and understand the information disclosed? Are there design elements or tools that are particularly effective, for example, mixed media presentations, the use of social media, or plain language infographics? If so, should these presentation and design elements be required, or are there steps that could be taken to facilitate use of those methods? Are participants and beneficiaries regularly surveyed or otherwise assessed regarding their comprehension of information about their plans? How are those surveys or reviews conducted? What additional information should be considered in developing disclosures that are effective for different participants and beneficiaries? How can the Agencies effectively measure the extent to which participants and beneficiaries understand the information that is disclosed to them?

Question 5. Plain English; foreign language-based issues; underserved communities.

Information disclosed to participants and beneficiaries is often quite technical and complex. However, for disclosures to be useful, information needs to be conveyed in “plain language”—in a way that is understandable to a highly demographically diverse population of workers and their beneficiaries. Labor Department disclosures, for example, generally are required to be “written in a manner calculated to be understood by the average plan participant.”²³ Similarly, certain PBGC notices to affected parties must be “readable and written in a manner calculated to be understood by the average plan participant.”²⁴ Also, the Treasury Department and the IRS require that notices to participants and beneficiaries be written in a manner calculated to be understood by the average plan participant.²⁵ Are these standards sufficient to ensure that notices and disclosures are likely to be comprehensible to participants and beneficiaries and, if not, what additional or different standards would enhance individuals' understanding? Further, not all workers speak English or speak English only as a second (or further removed) language. Some of the Agencies' disclosures are subject to standards as to the use of additional languages. Are these standards sufficient?²⁶ If not, what barriers to comprehension exist for non-native English-speakers, and what further steps could the Agencies take to reduce these barriers? Do plans take additional steps,

²³ See, e.g., ERISA section 105(a)(2)(A)(iii); 29 U.S.C. 1025(a)(2)(A)(iii) (applying the readability standard to pension benefit statements). See also 29 CFR 2520.102–2(a) (applying the readability standard to summary plan descriptions). The readability standard requires plan administrators to exercise considered judgment and discretion, taking into account factors such as the level of comprehension and education of a plan's participant population and the complexity of a plan's terms. Consideration of such factors usually compels plan administrators, for example, to write notices that limit or eliminate technical jargon and long, complex sentences, and that use clarifying examples and illustrations, clear cross references, and tables of contents. *Id.*

²⁴ 29 CFR 4041.3(c)(4).

²⁵ See, e.g., 26 CFR 54.4980F–1, Q&A–11(a)(2) (information in a section 204(h) notice must be written in a manner calculated to be understood by the average plan participant); 26 CFR 1.401(k)–3(d)(2)(i)(B) (providing that the safe harbor notice must be written in a manner calculated to be understood by the average employee).

²⁶ See, e.g., 29 CFR 2520.102–2(c) (describing standards for summary plan descriptions furnished to plan participants literate in a non-English language and assistance that must be provided to non-English speakers to inform them of their rights and obligations under the plan); 29 CFR 4041.3(c)(5).

in addition to what is required by ERISA and the Code, to educate or tailor disclosures to their participant populations? Is there existing research, user testing, or other considerations that the Agencies should review or steps they could take to increase the effectiveness of disclosures to participants and beneficiaries in underserved communities?

Question 6. Accessing required disclosures.

As noted in Question 4, section 319 of SECURE 2.0 requires that the Agencies' report to Congress include an analysis of "the rate at which participants and beneficiaries are receiving, *accessing*, understanding, and retaining disclosures." (Emphasis added.) The Agencies understand "access" to refer to the extent to which participants and beneficiaries open and look at, review, or consult the disclosure for purposes of using its information, either contemporaneous with the receipt of the disclosure or at any point in the future. What tools, if any, do entities have to discern whether participants and beneficiaries are accessing disclosures? Do individuals commonly access disclosures only on receipt, at regular intervals throughout the year, or only at specific points in time corresponding to major life milestones (e.g., marriage, divorce, childbirth, adoption, retirement, or job change)? Do participants and beneficiaries access disclosures more or less frequently depending on how the disclosures are furnished, for example, whether they receive paper disclosures in the mail, electronic disclosures via email, text messages, mobile applications, or notifications of disclosures' availability on a continuous-access website? Do they access certain disclosures at higher rates than others? What are best practices in ensuring that participants and beneficiaries have ready access to relevant information at the time they need it, and that they know they have such access?

Question 7. Retaining disclosures after receipt.

As noted in Question 4, section 319 of SECURE 2.0 requires that the Agencies' report to Congress include an analysis of "the rate at which participants and beneficiaries are receiving, accessing, understanding, and retaining disclosures." As to retention of disclosures, do plans collect data or conduct surveys on how often participants and beneficiaries download, print, save, or otherwise "retain" disclosures for future use? If so, how, and are any trends evident from such data? Does data exist on how often participants and beneficiaries request

copies of disclosures, for example, do they often request paper disclosures to be re-mailed or electronic versions of disclosures to be re-sent via email, text, or mobile application, and, if so, are any trends evident from such data? To what extent, if any, does the ability of plan participants to access plan-related information online, such as through a continuous access secure website, impact conventional retention behavior? What methodologies exist, or are in development, for measuring retention of disclosures by participants and beneficiaries?

Question 8. Participant and beneficiary engagement; decision-making.

Do plans collect data on participant and beneficiary levels of engagement in response to participant notices and disclosures and, if so, what data is collected, and how is "engagement" defined and determined? What impediments, if any, prevent or dissuade plans from collecting such data? If such data is collected, do plans act in response to such data and, if so, are there illustrative examples? For example, are there circumstances when plans act based upon evidence of a participant's lack of engagement? To the extent sensitive or confidential information may be used in efforts to enhance engagement with participants and beneficiaries, do best practices exist for plans to ensure that such information is accessible but is not inappropriately used or disclosed to other parties? Do plans collect data on the extent to which disclosures impact participant and beneficiary behavior and decision-making? If so, how is this impact assessed? Is certain information or are certain disclosures more likely to elicit engagement or modify individuals' behavior? If so, which information or disclosures, and how? Do plans and plan service providers have ready access to information on when or how often plan participants and beneficiaries visit a plan's website or open plan-related emails or text messages? Are there any impediments to plans collecting and considering such information in assessing engagement and effectiveness? If so, what are those impediments?

2. Plans, Plan Administrators, and Plan Service Providers—Furnishing Required Disclosures

Question 9. Provision of preferred contact information to plans.

Section 319 of SECURE 2.0 requires that the Agencies' report to Congress include an analysis of "how participants and beneficiaries are providing preferred contact information." Given the fact-based nature of this analysis,

the Agencies request data, statistics, or other information from plans about whether, when, how, and for what reasons (e.g., upon hire or plan eligibility, residential move, physical or mental impairment, marriage or divorce) participants and beneficiaries communicate and update their contact information for plan purposes. For example, new employees or participants may indicate their preferred contact information in plan enrollment materials, and existing employees and existing participants may update their preferred contact information directly on a plan's website, a plan recordkeeper's website, a mobile application, or the plan sponsor's human resources or other database, or by contacting the plan sponsor directly. Likewise, some employees, participants, and beneficiaries may need to provide and update contact information on file with their employer, their unions (if collectively bargained), and other plans that may be administered by different recordkeepers or other entities. Do plans remind employees, participants, and beneficiaries to check the accuracy of their contact information and update as necessary and, if so, when, and how? Are there circumstances when plans check the accuracy of a participant's or beneficiary's contact information, and, if so, under what circumstances; how are such checks performed? Are there observable trends in this data, for example, changes in response to Agency regulatory or other actions or changes in the retirement plan industry?

Question 10. Delivery—furnishing disclosures to participants and beneficiaries.

Section 319 of SECURE 2.0 requires that the Agencies' report to Congress include an analysis of both "the methods by which plan sponsors and plans are furnishing disclosures" and "the rate at which participants and beneficiaries are *receiving*, accessing, understanding, and retaining disclosures." (Emphasis added.) Each Agency has specific guidelines as to methods by which plans may furnish disclosures to participants and beneficiaries, including the circumstances in which disclosures may be furnished electronically (e.g., via email, website access, mobile and smartphone applications, or audio and video channels), rather than on paper.²⁷ As information technology evolves, so might the standard for "effective"

²⁷ 29 CFR 2520.104b-31 (the Labor Department's 2020 safe harbor); 29 CFR 2520.104b-1 (the Labor Department's 2002 safe harbor); 26 CFR 1.401(a)-21 and § 54.4980F-1, Q&A-13 (Treasury Department guidance); 29 CFR part 4000, subpart B (PBGC issuance rules).

delivery of information to participants and beneficiaries. Are there certain disclosures that participants and beneficiaries prefer to receive on paper (e.g., highly individualized and complex notices, such as quarterly and annual benefit statements), and, if so, what explains this preference? Commenters are encouraged to provide data, statistics, or other information about which delivery methods are most commonly used by plans and factors that may explain participants' preferences for certain delivery methods. For plans that deliver disclosures electronically, does data exist on participant opt-in and opt-out rates, practices, and trends in such rates? Do plans regularly reassess compliance with applicable electronic delivery standards or survey plan participants and beneficiaries regarding their preferences for how to receive information from their plans? Do plans periodically evaluate whether disclosures are successfully received by participants and beneficiaries and, if so, how? What data exists about rates of receipt? Are there observable trends in this data, for example, in response to Agency regulatory or other actions, changes in participant and beneficiary preferences, technological advances, or changes in the retirement plan industry? To what extent are age, demographics, or residence relevant to participants' and beneficiaries' effective access to and use of electronic means of delivery? If these variables are relevant, what are best practices for addressing differential use of and access to electronic disclosures?

Question 11. Availability of model notices or model language.

In some cases, the Agencies offer, or are required by statute to provide, model notices or model language that can be used by plans or plan administrators to satisfy the content requirements of required disclosures.²⁸ To what extent does the provision of models reduce the cost to plans for preparing required disclosures? The Agencies generally provide model notices or language in English; what are commenters' views on the Agencies' provision of model notices or language in one or more languages other than English and how to determine which languages? To what extent does the provision of such models impact the understanding and retention of the disclosure by a participant or

beneficiary? Are there additional model notices or model language that the Agencies could provide for specific disclosures that would be especially helpful to plans or that would reduce the burden on plans to prepare such disclosures?

Question 12. Participant and beneficiary feedback regarding notices and disclosures.

Please describe the extent to which plans receive questions from, or are made aware of concerns from, individuals who receive required notices and disclosures regarding those communications. What procedures are in place to respond to such questions and concerns? Are there common themes in the types of issues that result in inquiries from participants and beneficiaries? Is there any notable difference in the types of questions and concerns that are raised by telephone, by email, or otherwise?

Question 13. Costs of disclosure.

What is the aggregate annual cost to defined contribution and defined benefit plans to make required disclosures? Are costs significantly higher for certain disclosures than others and, if so, which disclosures and why? To what extent are these disclosure costs paid from plan assets or from the general assets of a plan sponsor? Are there ways to lower disclosure costs without negatively impacting the comprehensiveness or effectiveness of the information that is required to be disclosed? Commenters are encouraged to provide any data relevant to these questions.

B. Reporting to the Agencies

As with required disclosures, the effectiveness of required reporting to the Agencies can be measured from different perspectives. Section 319 of SECURE 2.0 explicitly refers to "simplify[ing] reporting for . . . plans," evidencing concern for plans' perspectives. But the effectiveness of the Code's and ERISA's reporting requirements also may be evaluated from the perspectives of the Agencies receiving required reports, the participants and beneficiaries of reporting plans, and third parties who may be able to aggregate and use reported information to inform academic, industry, participant advocacy, or other work. Each of these perspectives is raised below.

1. Submission of Required Reports by Plans

Question 14. Frequency and timing of reports.

What is your view on the number of reports that must be filed with the

Agencies each plan or calendar year and how this number impacts a plan's ability to implement reporting procedures efficiently? Are the timing requirements of any reports in conflict or inefficient, either for one Agency or across the Agencies? Could the filing deadlines for any reports, either for ERISA or the Code or both, be modified to allow consolidation of more than one report without compromising the Agencies' timely receipt of information?

Question 15. Content of reports.

Please describe the extent to which any of the reports required by ERISA or the Code collect more, or less, information than you believe should be necessary for the Agencies to discharge their oversight and other responsibilities? If so, which reports, and how could they be modified to inform the Agencies more effectively? Do any challenges exist in obtaining information from sources subject to laws other than the Code and ERISA (e.g., Federal securities laws or State insurance laws) that is necessary, or helpful, for preparation of reports?

Question 16. Clarity of reporting requirements.

Are the instructions for reports clear and helpful? Are there particular reports for which the instructions could be simplified or could more accurately reflect the administration of retirement plans? Should the Agencies make instructions available in languages other than English? Should instructions be written subject to a readability standard, such as in a manner reasonably calculated to be understood by the target filers (for example large companies versus small employers)?

Question 17. Efficacy of filing methods for reports.

Do the filing methods for reports need updating or improvement? For reports that must be filed electronically, are there circumstances when plans would benefit from waiver procedures permitting paper filings and, if so, what plans, what reports, and what circumstances? Alternatively, are there reports that must be filed on paper that would be more effectively filed electronically, and, if so, as a mandate or as an option?

Question 18. Improving Agency assistance with reporting requirements.

Are the Agencies' customer service personnel and capabilities sufficient or in need of improvement for the questions about the content of reports, technical support for completing and filing reports, or otherwise? Should the Agencies monitor, track, and disclose user experience for any reports? If so, how should the Agencies compile this data and use it to inform improvements

²⁸ See, e.g., 29 CFR 2520.101-3(e)(2) (model notice of blackout periods under individual account plans); 29 CFR 4041.23(b) and 4041.43(b) (model notices of intention to terminate plan); IRS Notice 2020-62, 2020-35 IRB 476, (model Code section 402(f) notices).

to customer service protocols, including technical support?

Question 19. Costs of reporting.

What is the aggregate annual cost to defined contribution and defined benefit plans to submit reports required by ERISA and the Code? Are costs significantly higher for certain reports than others and, if so, which reports, and why? To what extent are such reporting costs paid from plan assets versus from the general assets of the plan sponsor? Commenters are encouraged to provide any data relevant to these questions.

2. Participants, Beneficiaries, and Third Parties—Use of Publicly Available Information and Data

Question 20. Use of reports and data by participants and beneficiaries.

Is there information reported to the Agencies, but not affirmatively required to be furnished by plans to participants and beneficiaries, that might be beneficial to participants and beneficiaries? If so, what information and to what benefit? Could such information be furnished in a cost-effective manner or made available to participants and beneficiaries? If so, please describe these methods and how they could be cost effective. Is there evidence that participants and beneficiaries request to review any reports (or certain information or data) that is reported?

Question 21. Use of reports and data by other entities.

Do any of the reports required by ERISA and the Code fail to collect information that data users other than the Agencies, including the public at large, data aggregators, and participant advocates, would find useful? If so, which reports and information, and how could reports be modified to collect this information in a cost-effective manner? How would this information be used and how would requesting this information benefit retirement plan participants and beneficiaries, plans, or others? What information should be publicly available, and, if so, how might confidentiality, security, or other concerns be managed (e.g., protection of return information as required by Code section 6103)? To what extent do plans and plan service providers give third parties, such as data aggregators and consultants, access to plan data (e.g., plan investment lineups and associated fees, costs, and performance data) that could facilitate the development of analytic tools and comparative analyses that could be used by plan fiduciaries, participants, or beneficiaries to improve retirement outcomes? Are there impediments to the disclosure of useful

plan data to such third parties that are inappropriate or that interfere with the cost-effective delivery of such analytic tools or comparative analyses?

C. Additional Questions

Question 22. Coordination of Agencies' reporting and disclosure requirements.

Would participants, beneficiaries, and plans benefit from increased coordination between the Agencies regarding one or more reporting or disclosure requirements and, if so, how? What steps could the Agencies take to achieve such coordination, for example, which specific disclosures, reports, or information could be effectively harmonized by the Agencies and how could the Agencies do so in a cost-effective manner?

Question 23. Alternative methods for information collection.

SECURE 2.0 section 319(b)(3) explicitly provides that the Agencies may “conduct appropriate surveys and data collection to obtain any needed information.” If this authority were used, what data or information should be collected, and what are cost-effective methods that the Agencies could employ to collect such data or information, for example, by consulting with a balanced group of participant and employer representatives, conducting focus groups, preparing surveys, or holding a joint hearing?

Question 24. Additional information.

Is there any information or are there any suggestions that the Agencies should consider that are not addressed by the questions in this RFI and that may be important to achieve the desired effectiveness of reporting and disclosures as set forth in SECURE 2.0 section 319?

* * * * *

Signed at Washington, DC.

Rachel D. Levy,

Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), Internal Revenue Service, Department of the Treasury.

Helen H. Morrison,

Benefits Tax Counsel, Department of the Treasury.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

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BILLING CODE 4510–29–P; 4830–01–P; 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0904]

RIN 1625–AA11

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend and update its list of recurring safety zone regulations that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). Through this rule the current list of recurring safety zones is proposed to be updated with revisions, additional events, and removal of events that no longer take place. This proposed rule would reduce administrative costs involved in producing separate proposed rules for each individual recurring safety zone and serve to provide notice of the known recurring safety zones throughout the year. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 22, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0904 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST2 Bryan Crane, Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5334, email SECOHV-WWM@USCG.MIL.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AOR Area of responsibility
CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
AOR Area of Responsibility

II. Background, Purpose, and Legal Basis

The Captain of the Port Sector Ohio Valley (COTP) proposes to amend section 165.801 of Title 33 of the Code of Federal Regulations (CFR) to update our regulations for annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones with respect to those in Sector Ohio Valley.

The current list of annual and recurring safety zones in Sector Ohio Valley’s area of responsibility (AOR) is published under Table 1 of 33 CFR 165.801 for annual safety zones in the AOR.

The Coast Guard proposes to amend and update the safety zone regulations under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within Sector Ohio Valley’s AOR. These events include air shows, fireworks displays, and other marine related events requiring a

limited access area restricting vessel traffic for safety purposes. The current list in 33 CFR 165.801 needs to be amended to provide new information on existing safety zones, and to include new safety zones expected to recur annually or biannually, and to remove safety zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone would create unnecessary administrative costs and burdens. This single proposed rulemaking would considerably reduce administrative overhead and provide the public with notice through publication in the **Federal Register** of the upcoming recurring safety zone regulations.

The Coast Guard encourages the public to participate in this proposed rulemaking through the comment process so that any necessary changes can be identified and implemented in a timely and efficient manner. The Coast Guard will address all public comments

accordingly, whether through response, additional revision to the regulation, or otherwise.

III. Discussion of Proposed Rule

Part 165 of 33 CFR contains regulations establishing limited access areas to restrict vessel traffic for the safety of persons and property. Section 165.801 establishes recurring safety zones to restrict vessel transit into and through specified areas to protect spectators, mariners, and other persons and property from potential hazards presented during certain events taking place in the AOR. This section requires amendment from time to time to properly reflect the recurring safety zone regulations in the AOR. This proposed rule would amend and update § 165.801 by revising the current Table 1.

This proposed rule would add the following 3 safety zones to the existing Table 1 section 165.801 as follows:

Date	Event/sponsor	Ohio Valley location	Regulated area
1 day—First or Second weekend in July	Rivesville Firework Show	Rivesville, WV	Monongahela River, Miles 122–124 (West Virginia).
1 day in August	Wheeling Water Lantern Tribute	Wheeling, WV	Ohio River, Miles 90–92 (West Virginia).
1 day—Labor Day Weekend	Catlettsburg Labor Day Fireworks	Catlettsburg, KY	Ohio River (Mile 317–317.5) Kentucky.

These new recurring events would be reflected in the table in the general date order in which they will occur, and the

current recurring events would be reordered, as shown in the proposed regulatory text below.

This proposed rule would amend the following 2 safety zones to the existing Table 1 section 165.801 as follows:

Date	Event/sponsor	Ohio Valley location	Regulated area	Previously
1 Day—Recurring one week-end in May and June, and on July 4th.	Live on the Levee Fireworks (Previously Live on the Levee Memorial Day fireworks).	Charleston, WV ..	Kanawha River, Mile 58.1–59.1 (West Virginia).	1 Day—Recurring one week-end in May and June, and on July 4th.
23. 1 day—Last weekend in June or first weekend in July.	City of Aurora/Aurora Riverfront Beautification—Red, White, and Boom.	Aurora, IN	Ohio River, Mile 496.7; 1,400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).	23. 1 day—Last weekend in June or first weekend in July.

The effect of this proposed rule would be to restrict general navigation in the safety zones during the events. Vessels intending to transit the designated waterway through the safety zones would only be allowed to transit the area when the COTP, or a designated representative, has deemed it safe to do so or at the completion of the event. The proposed annually recurring safety zones are necessary to provide for the safety of life on navigable waters during the events.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

The Coast Guard expects the economic impact of this proposed rule to be minimal, therefore a full regulatory evaluation is unnecessary. This proposed rule would establish safety zones limiting access to certain areas

under 33 CFR part 165 within Sector Ohio Valley's AOR. The effect of this proposed rulemaking would not be significant because these safety zones would be limited in scope and duration. Additionally, the public would be given advance notification through the **Federal Register**, and/or Notices of Enforcement and, thus, will be able to plan operations around the safety zones. Broadcast Notices to Mariners, Local Notices to Mariners, and Safety Marine Information Broadcasts would inform the community of these safety zones. Vessel traffic would be allowed to request permission from the COTP or a designated representative to enter the restricted areas. Broadcast Notices to Mariners, Local Notices to Mariners, and Safety Marine Information Broadcasts would inform the community of these safety zones. Vessel traffic would be allowed to request permission from the COTP or a designated representative to enter the restricted areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which

guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0904 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the

Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy

and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.801, revise and republish Table 1 to read as follows:

§ 165.801 Annual Fireworks displays and other events in the Eighth Coast Guard District recurring safety zones.

* * * * *

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
1. 3 days—Third or Fourth weekend in April.	Henderson Breakfast Lions Club Tri-Fest.	Henderson, KY	Ohio River, Miles 802.5–805.5 (Kentucky).
2. 2 days—Third Friday and Saturday in April.	Thunder Over Louisville	Louisville, KY	Ohio River, Mile 597.0–604.0 (Kentucky).
3. Multiple days—April through November.	Pittsburgh Pirates Season Fireworks	Pittsburgh, PA	Allegheny River, Miles 0.2–0.9 (Pennsylvania).
4. Multiple days—April through November.	Cincinnati Reds Season Fireworks ...	Cincinnati, OH	Ohio River, Miles 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
5. Multiple days—April through November.	Pittsburgh Riverhounds Season Fireworks.	Pittsburgh, PA	Monongahela River, Miles 0.22–0.77 (Pennsylvania).
6. 1 day—First week in May	Belterra Park Gaming Fireworks	Cincinnati, OH	Ohio River, Miles 460.0–462.0 (Ohio).
7. 1 day—Recurring one weekend in May and June, and on July 4th.	Live on the Levee Fireworks (Previously Live on the Levee Memorial Day fireworks).	Charleston, WV	Kanawha River, Mile 58.1–59.1 (West Virginia).
8. 1 day—Saturday before Memorial Day.	Venture Outdoors Festival	Pittsburgh, PA	Allegheny River, Miles 0.0–0.25; Monongahela River, Miles 0.0–0.25 (Pennsylvania).
9. 1 day—Saturday before Memorial Day.	Ironton-Lawrence County Memorial Day Fireworks.	Ironton, OH	Ohio River, Mile 328 (West Virginia).
10. 1 day—First Sunday in June	West Virginia Symphony Orchestra/Symphony Sunday.	Charleston, WV	Kanawha River, Miles 59.5–60.5 (West Virginia).
11. 3 days in June	CMA Festival	Nashville, TN	Cumberland River, Miles 190.7–191.1 extending 100 feet from the left descending bank (Tennessee).
12. 1 day in June	Cumberland River Compact/Nashville Splash Bash.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).
13. 2 days—A weekend in June	Rice's Landing Riverfest	Rice's Landing, PA	Monongahela River, Miles 68.0–68.8 (Pennsylvania).
14. 2 days—Second Friday and Saturday in June.	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 468.6–471.0 (Kentucky and Ohio).
15. 1 day in June	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
16. 1 day in June	Junteenth/Black Complex of Louisville.	Louisville, KY	Ohio River, Miles 603.5–604.5.
17. 1 day in June	CMA Festival Fireworks	Nashville, TN	Cumberland River 190–191 (Tennessee).
18. 1 day—Second or Third week of June.	TriState Pottery Festival Fireworks ...	East Liverpool, OH	Ohio River, Miles 42.5–45.0 (Ohio).
19. 3 days—One of the last three weekends in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN	Ohio River, Miles 790.0–796.0 (Indiana).
20. One weekend in June	Alzheimer's Water Lantern Festival/IC Care.	Wheeling, WV	Ohio River Mile 90.3–91.8.
21. 1 day—Last weekend in June or first weekend in July.	Riverview Park Independence Festival.	Louisville, KY	Ohio River, Miles 617.5–620.5 (Kentucky).
22. 1 day—Last weekend in June or First weekend in July.	City of Point Pleasant/Point Pleasant Sternwheel Fireworks.	Point Pleasant, WV	Ohio River, Miles 265.2–266.2, Kanawha River Miles 0.0–0.5 (West Virginia).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
23. 1 day—Last weekend in June or first weekend in July.	City of Aurora/Aurora Riverfront Beautification—Red, White, and Boom.	Aurora, IN	Ohio River, Mile 496.7; 1,400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
24. 1 day—Last week of June or first week of July.	PUSH Beaver County/Beaver County Boom.	Beaver, PA	Ohio River, Miles 25.2–25.6 (Pennsylvania).
25. 1 day—Last weekend in June or first week in July.	Evansville Freedom Celebration/4th of July Fireworks.	Evansville, IN	Ohio River, Miles 790.0–796.0 (Indiana).
26. 1 day—Last week in June or First week in July.	Rising Sun Fireworks	Rising Sun, IN	Ohio River, Miles 506.0–507.0 (Indiana).
27. 1 day—Weekend before the 4th of July.	Kentucky Dam Marine/Kentucky Dam Marina Fireworks.	Gilbertsville, KY	350 foot radius, from the fireworks launch site, on the entrance jetties at Kentucky Dam Marina, on the Tennessee River at Mile Marker 23 (Kentucky).
28. 1 day—First or Second weekend in July.	Rivesville Firework Show	Rivesville, WV	Monongahela River, Miles 122–124 (West Virginia).
29. 1 day in July	Clarksville Independence Day Fireworks.	Ashland City, TN	Cumberland River, Miles 127–129 (Tennessee).
30. 1 day in July	Gallatin Marina Fireworks	Gallatin, TN	Cumberland River, Miles 236.5–237.5 (Tennessee).
31. 1 day in July	Town of Cumberland City/Lighting up the Cumberlands.	Cumberland City, TN	Cumberland River, Miles 103.0–105.5 (Tennessee).
32. 1 day in July	Chattanooga Presents/Pops on the River.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
33. 1 day in July	Randy Boyd/Independence Celebration Fireworks Display.	Knoxville, TN	Tennessee River, Miles 625.0–628.0 (Tennessee).
34. 1 day—July 3rd	Moors Resort and Marina/Kentucky Lake Big Bang.	Gilbertsville, KY	600 foot radius, from the fireworks launch site, on the entrance jetty to Moors Resort and Marina, on the Tennessee River at mile marker 30.5. (Kentucky).
35. 1 day—3rd or 4th of July	City of Paducah, KY	Paducah, KY	Ohio River, Miles 934.0–936.0; Tennessee River, Miles 0.0–1.0 (Kentucky).
36. 1 day—3rd or 4th of July	City of Hickman, KY/Town Of Hickman Fireworks.	Hickman, KY	700 foot radius from GPS coordinate 36°34.5035 N, 089°11.919 W, in Hickman Harbor located at mile marker 921.5 on the Lower Mississippi River (Kentucky).
37. 1 day—July 4th	City of Knoxville/Knoxville Festival on the 4th.	Knoxville, TN	Tennessee River, Miles 646.3–648.7 (Tennessee).
38. 1 day in July	Nashville NCVC/Independence Celebration.	Nashville, TN	Cumberland River, Miles 189.7–192.3 (Tennessee).
39. 1 day in July	Shoals Radio Group/Spirit of Freedom Fireworks.	Florence, AL	Tennessee River, Miles 254.5–257.4 (Alabama).
40. 1 day—4th of July (Rain date—July 5th).	Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration.	Monongahela, PA	Monongahela River, Miles 032.0–033.0 (Pennsylvania).
41. 1 day—July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks.	Newport, KY	Ohio River, Miles 469.6–470.2 (Kentucky and Ohio).
42. 1 day—July 4th	Wellsburg 4th of July Committee/Wellsburg 4th of July Freedom Celebration.	Wellsburg, WV	Ohio River, Miles 73.5–74.5 (West Virginia).
43. 1 day—week of July 4th	Wheeling Symphony fireworks	Wheeling, WV	Ohio River, Miles 90–92 (West Virginia).
44. 1 day—First week or weekend in July.	Summer Motions Inc./Summer Motion.	Ashland, KY	Ohio River, Miles 322.1–323.1 (Kentucky).
45. 1 day—week of July 4th	Chester Fireworks	Chester, WV	Ohio River mile 42.0–44.0 (West Virginia).
46. 1 day—First week of July	Toronto 4th of July Fireworks	Toronto, OH	Ohio River, Mile 58.2–58.8 (Ohio).
47. 1 day—First week of July	Cincinnati Symphony Orchestra	Cincinnati, OH	Ohio River, Miles 460.0–462.0 (Ohio).
48. 1 day—First week or weekend in July.	Gallia County Chamber of Commerce/Gallipolis River Recreation Festival.	Gallipolis, OH	Ohio River, Miles 269.5–270.5 (Ohio).
49. 1 day—First week or weekend in July.	Kindred Communications/Dawg Dazzle.	Huntington, WV	Ohio River, Miles 307.8–308.8 (West Virginia).
50. 1 day—First week or weekend in July.	Greenup City	Greenup, KY	Ohio River, Miles 335.2–336.2 (Kentucky).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
51. 1 day—First week or weekend in July.	Middleport Community Association ...	Middleport, OH	Ohio River, Miles 251.5–252.5 (Ohio).
52. 1 day—First week or weekend in July.	People for the Point Party in the Park.	South Point, OH	Ohio River, Miles 317–318 (Ohio).
53. 1 day—One of the first two weekends in July.	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Miles 468.2–469.2 (Kentucky & Ohio).
54. 1 day—First Week of July	Pittsburgh 4th of July Celebration	Pittsburgh, PA	Ohio River, Miles 0.0–0.5, Allegheny River, Miles 0.0–0.5, and Monongahela River, Miles 0.0–0.5 (Pennsylvania).
55. 1 day—First week or weekend in July.	City of Charleston/City of Charleston Independence Day Celebration.	Charleston, WV	Kanawha River, Miles 58.1–59.1 (West Virginia).
56. 1 day—First week or weekend in July.	Portsmouth River Days	Portsmouth, OH	Ohio River, Miles 355.5–357.0 (Ohio).
57. 1 day—During the first week of July.	Louisville Bats Baseball Club/Louisville Bats Firework Show.	Louisville, KY	Ohio River, Miles 602.0–605.0 (Kentucky).
58. 1 day—During the first week of July.	Waterfront Independence Festival/Louisville Orchestra Waterfront 4th.	Louisville, KY	Ohio River, Miles 602.0–605.0 (Kentucky).
59. 1 day—During the first week of July.	Celebration of the American Spirit Fireworks/All American 4th of July.	Owensboro, KY	Ohio River, Miles 754.0–760.0 (Kentucky).
60. 1 day—During the first week of July.	Riverfront Independence Festival Fireworks.	New Albany, IN	Ohio River, Miles 606.5–609.6 (Indiana).
61. 1 day in July	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Miles 448.5–451.0 (Tennessee).
62. 1 night in July	Steubenville fireworks	Steubenville, OH	Ohio River Mile 67.5–68.5.
63. 1 day—During the first two weeks of July.	City of Maysville Fireworks	Maysville, KY	Ohio River, Miles 408–409 (Kentucky).
64. 1 day—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta.	Madison, IN	Ohio River, Miles 554.0–561.0 (Indiana).
65. 1 day—Third Saturday in July	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA	Ohio River, Miles 7.0–9.0 (Pennsylvania).
66. 1 day—Third or fourth week in July.	Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks.	Wheeling, WV	Ohio River, Miles 90.0–90.5 (West Virginia).
67. 1 day—Saturday Third or Fourth full week of July (Rain date—following Sunday).	Oakmont Yacht Club/Oakmont Yacht Club Fireworks.	Oakmont, PA	Allegheny River, Miles 12.0–12.5 (Pennsylvania).
68. 2 days—One weekend in July	Marietta Riverfront Roar Fireworks ...	Marietta, OH	Ohio River, Miles 171.6–172.6 (Ohio).
69. 1 day—Last weekend in July or first weekend in August.	Fort Armstrong Folk Music Festival ..	Kittanning, PA	Allegheny River, Mile 45.1–45.5 (Pennsylvania).
70. 1 day in August	Music City Grand Prix Fireworks	Nashville, TN	Cumberland River 190–191 (Tennessee).
71. 1 day in August	Wheeling Water Lantern Tribute	Wheeling, WV	Ohio River, Miles 90–92 (West Virginia).
72. 1 day in August	Nashville ASAE Fireworks	Nashville, TN	Cumberland River 190–191 (Tennessee).
73. 3 Days in August	Music City Grand Prix	Nashville, TN	Cumberland River 190–191 (Tennessee).
74. 1 day—First week in August	Gliers Goetta Fest LLC	Newport, KY	Ohio River, Miles 469.0–471.0.
75. 1 day—First or second week of August.	Bellaire All-American Days	Bellaire, OH	Ohio River, Miles 93.5–94.5 (Ohio).
76. 1 day—Second full week of August.	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Miles 0.8–1.0 (Pennsylvania).
77. 1 day—Second Saturday in August.	Guyasuta Days Festival/Borough of Sharpsburg.	Pittsburgh, PA	Allegheny River, Miles 005.5–006.0 (Pennsylvania).
78. 1 day—In the Month of August	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5 (Pennsylvania).
79. 1 day—Third week of August	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Miles 25.2–25.8 (Pennsylvania).
80. 1 day—One weekend in August ..	Parkersburg Homecoming Festival-Fireworks.	Parkersburg, WV	Ohio River, Miles 183.5–185.5 (West Virginia).
81. 1 day—One weekend in August ..	Ravenswood River Festival	Ravenswood, WV	Ohio River, Miles 220–221 (West Virginia).
82. 1 day—The second or third weekend of August.	Green Turtle Bay Resort/Grand Rivers Marina Day.	Grand Rivers, KY	420 foot radius, from the fireworks launch site, at the entrance to Green Turtle Bay Resort, on the Cumberland River at mile marker 31.5. (Kentucky).
83. 1 day—last 2 weekends in August/first week of September.	Wheeling Dragon Boat Race	Wheeling, WV	Ohio River, Miles 90.4–91.5 (West Virginia).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
84. 1 day—One weekend in the month of August or September.	Owensboro Fireworks and Bridge Lights show.	Owensboro, KY	Ohio River, Miles 756–757 (Kentucky).
85. Sunday, Monday, or Thursday from August through February.	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Allegheny River, Miles 0.0–0.25, Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1. (Pennsylvania).
86. 1 day—One weekend before Labor Day.	Riverfest/Riverfest Inc	Nitro, WV	Kanawha River, Miles 43.1–44.2 (West Virginia).
87. 1 day—The weekend of Labor Day.	Newburgh Fireworks Display	Newburgh, IN	Ohio River, Miles 777.3–778.3 (Indiana).
88. 1 day—Labor day Weekend	Catlettsburg Labor Day Fireworks	Catlettsburg, KY	Ohio River (Mile 317–317.5) Kentucky.
89. 2 days—Sunday before Labor Day and Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Miles 469.2–470.5 (Kentucky and Ohio) and Licking River, Miles 0.0–3.0 (Kentucky).
90. 1 day in September	Nashville Symphony/Concert Fireworks.	Nashville, TN	Cumberland River, Miles 190.1–192.3 (Tennessee).
91. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest.	Clarksville, TN	Cumberland River, Miles 124.5–127.0 (Tennessee).
92. 3 days—Second or third week in September.	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV	Ohio River, Miles 90.2–90.7 (West Virginia).
93. 1 day—One weekend in September.	Ohio River Sternwheel Festival Committee fireworks.	Marietta, OH	Ohio River, Miles 171.5–172.5 (Ohio).
94. 1 day—One weekend in September.	Tribute to the River	Point Pleasant, WV	Ohio River, Miles 264.6–265.6 (West Virginia).
95. 1 day—One weekend in September.	Aurora Fireworks	Aurora, IN	Ohio River, Mile 496.3–497.3 (Ohio).
96. 1 day—Last two weekends in September.	Cabana on the River	Cincinnati, OH	Ohio River, Mile 483.2–484.2 (Ohio).
97. Multiple days—September through January.	University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks.	Pittsburgh, PA	Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1, Allegheny River, Miles 0.0–0.25 (Pennsylvania).
98. 1 day—First three weeks of October.	Leukemia & Lymphoma Society/Light the Night.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
99. 1 day in October	Leukemia and Lymphoma Society/Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Miles 189.7–192.1 (Tennessee).
100. 1 day—First two weeks in October.	Yeatman's Fireworks	Cincinnati, OH	Ohio River, Miles 469.0–470.5 (Ohio).
101. 1 day—One weekend in October	West Virginia Motor Car Festival	Charleston, WV	Kanawha River, Miles 58–59 (West Virginia).
102. 2 days—One of the last three weekends in October.	Monster Pumpkin Festival	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25 (Pennsylvania).
103. 1 day—Within two weeks of Thanksgiving.	Pittsburgh Downtown Partnership/Light Up Night.	Pittsburgh, PA	Allegheny River, Miles 0.0–1.0 (Pennsylvania).
104. 1 day—Friday before Thanksgiving.	Kittanning Light Up Night Firework Display.	Kittanning, PA	Allegheny River, Miles 44.5–45.5 (Pennsylvania).
105. 1 day—within 2 weeks of Thanksgiving.	Santa Spectacular/Light up Night	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
106. 1 day—Friday before Thanksgiving.	Monongahela Holiday Show	Monongahela, PA	Ohio River, Miles 31.5–32.5 (Pennsylvania).
107. 1 day in November	Friends of the Festival/Cheer at the Pier.	Chattanooga, TN	Tennessee River, Miles 462.7–465.2 (Tennessee).
108. 1 day—Third week of November	Gallipolis in Lights	Gallipolis, OH	Ohio River, Miles 269.2–270 (Ohio).
109. 1 day—December 31	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh.	Pittsburgh, PA	Allegheny River, Miles 0.5–1.0 (Pennsylvania).
110. 7 days—Scheduled home games.	University of Tennessee/UT Football Fireworks.	Knoxville, TN	Tennessee River, Miles 645.6–648.3 (Tennessee).

* * * * *

Dated: January 16, 2024.

H.R. Mattern,

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

[FR Doc. 2024–01186 Filed 1–22–24; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2023–OESE–0209]

Proposed Priorities, Requirements, Definitions, and Selection Criteria—Comprehensive Centers Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities, requirements, definitions, and selection criteria under the Comprehensive Centers Program, Assistance Listing Number 84.283B. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2024 and later years. We intend to award grants to establish Comprehensive Centers that provide high-quality capacity-building services to State, regional, and local educational agencies and schools that improve educational opportunities and outcomes, close achievement gaps, and improve the quality of instruction for all students.

DATES: We must receive your comments on or before February 22, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at www.regulations.gov. However, if you require an accommodation or cannot otherwise submit your comments via www.regulations.gov, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Please go to www.regulations.gov to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ.”

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Dr. Michelle Daley. Telephone: (202) 987–1057. Email: OESE.ComprehensiveCenters@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, definitions, and selection criteria. To ensure that your comments have maximum effect in developing the final priorities, requirements, definitions, and selection criteria, please identify clearly the specific proposed priorities, requirements, definitions, and selection criteria that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities, requirements, definitions, and selection criteria by accessing *Regulations.gov*. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities, requirements, definitions, and selection criteria. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The Comprehensive Centers Program

supports the establishment of Comprehensive Centers to provide capacity-building services to State educational agencies (SEAs), regional educational agencies (REAs), local educational agencies (LEAs), and schools that improve educational outcomes, close achievement gaps, and improve the quality of instruction for all students, and particularly for groups of students with the greatest need, including students from low-income families and students attending schools implementing comprehensive support and improvement or targeted or improvement activities under section 1111(d) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Program Authority: Section 203 of the Educational Technical Assistance Act of 2002 (ETAA) (20 U.S.C. 9601 *et seq.*).

Public Participation: In developing proposed priorities for this program, the Department consulted with education stakeholders, including through Regional Advisory Committees (RACs) established under section 206 of the ETAA, Tribes, chief State school officers, chief executive officers of States, and Regional Educational Laboratory (REL) governing boards.

Tribal Consultation: Consistent with Executive Order 13175 and the Department’s Tribal consultation policy, on January 24, 2023, the Department conducted a Tribal Consultation to gather perspectives from Tribal leaders, including Tribal educational agency (TEA) leaders, to inform the development of the Department’s FY 2024 Comprehensive Center grant competition. More than 150 attendees joined the consultation.

Commenters highlighted the importance of including Tribes in developing Centers’ five-year service plans to carry out authorized activities for the Comprehensive Centers Program. Commenters emphasized Tribal inclusion on Center advisory boards (described in section 203(g) of the ETAA) and participation in annual planning to align goals among SEAs, LEAs, IHEs, and TEAs to generate greater synergy for more meaningful changes and success for Native persons within the educational system.

Tribal leaders broadly affirmed the need for capacity-building services within the areas of focus of the Comprehensive Centers, in the following order of importance: (1) implement and scale up evidence-based programs, practices, and interventions that directly benefit recipients that have disadvantaged students or high percentages or numbers of students from

low-income families; (2) support Tribal schools that are implementing support and improvement activities; (3) implement and scale up evidence-based programs, practices, and interventions that address the unique educational obstacles faced by rural populations; and (4) address corrective actions or results from audit findings and monitoring conducted by the Department at the request of the client. In addition, Tribal leaders identified specific needs for services in: (1) supporting rural areas with shortages of educators and student support staff, such as school psychologists, school social workers, and instructional coaches who have experience with trauma-informed instruction; (2) allocating resources to train and recruit professionals to work in Tribal communities; and (3) supporting TEAs with ongoing administrative functions.

Regional Advisory Committees: In accordance with ETAA section 206, the Secretary established 10 RACs to conduct an education needs assessment and identify each region's most critical educational needs and develop recommendations for technical assistance to meet those needs. The RACs met and engaged their respective constituencies to make their assessments and recommendations between August and November 2023. Final RAC reports were published in December 2023 on the Department's website at <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/comprehensive-centers-program/regional-advisory-committees/>.

While specific needs and recommendations varied by region, the most common needs identified across all 10 RACs were: (1) supporting teachers, school leaders, and school personnel, including addressing workforce shortages, supporting educator preparation programs and pathways, strengthening recruitment and retention, and diversifying the educator workforce; (2) supporting strong instruction and academic achievement, including supporting evidence-based math and literacy instruction, ensuring equity and addressing issues of disproportionality, addressing opportunity gaps to promote academic achievement and growth for all learners, and promoting access to a high-quality early childhood education; (3) supporting student populations with specific learning needs, including early grades, English learners, multilingual learners, children with disabilities, and growing populations of refugee and immigrant children and youth; (4) supporting student well-being and

mental health; (5) promoting safe and engaged school communities, including promoting authentic parent and community engagement, positive school climate, and addressing issues of chronic absenteeism; and (6) promoting career and postsecondary educational pathways.

Education stakeholders noted that identified needs were not mutually exclusive and there is considerable overlap across educational priorities that may require coordinated approaches to implementing ESEA programs, promoting strong instruction, supporting educators, ensuring equity, and supporting school communities' academic, social emotional, and mental health needs. Detailed recommendations for services to meet those needs are included in the individual report from each RAC. Some examples of RAC recommendations included: (1) providing professional development to assist teachers in translating evidence-based practices into educator-friendly tools, resources, and training; (2) creating resources to support effective family engagement and improve academic achievement; (3) supporting data use and disaggregation to better identify and understand the needs of special student populations; (4) identifying and disseminating evidence-based approaches to meeting student instructional needs; (5) developing, implementing, and evaluating "grow your own" and apprenticeship programs as well as alternative pathways into the teaching profession; (6) developing targeted recruitment strategies including financial incentives, scholarship programs, and marketing campaigns highlighting the value of the profession to attract more individuals from diverse backgrounds to the profession; (7) supporting LEAs to provide differentiated and evidence-based professional learning opportunities to both novice and experienced teachers that are specific to the needs and context of their unique LEA and/or school; (8) supporting educators in identifying high-quality curricular and digital learning materials; (9) supporting SEAs and LEAs in developing new and innovative secondary and postsecondary pathways that emphasize applied learning and mastery; (10) supporting partnerships with local communities, local Tribes, and Tribal governments to identify local career needs and work-based learning opportunities and appropriate pathways; (11) supporting LEAs in developing resource allocation systems that allow resources to be focused on student learning (e.g., budgeting,

scheduling, resourcing, and long-term planning); and (12) developing models for multi-tiered systems of support (MTSS) and integrating Positive Behavioral Interventions and Supports (PBIS) to address school and community mental health needs. The RACs noted that professional development and technical assistance must be grounded in adult learning theory, address the needs of educators and students of color, and, when proven effective, be shared across the region and with other regions.

Proposed Priorities

We propose three priorities. The Assistant Secretary may use one or more of these priorities for the FY 2024 Comprehensive Centers Program competition or for any subsequent competition.

Background:

The ESEA holds States accountable for closing achievement gaps and ensuring that all children, regardless of race, ethnicity, family income, English language proficiency, or disability, receive a high-quality education and meet challenging State academic standards.

The ETAA authorizes support for not less than 20 grants to establish Comprehensive Centers to support State and local educational systems to implement activities described in the ESEA to improve academic opportunities and outcomes for students. Centers are operated through cooperative agreements with the U.S. Department of Education. Centers focus on building the capacity of those receiving Comprehensive Center services (recipients) in one of four dimensions of capacity-building: human, organizational, policy, and resource. Recipients primarily include staff of SEAs and, as appropriate, REAs, including TEAs as defined in ESEA section 6132(b)(3); LEAs; and schools.

Under section 203(a)(2) of the ETAA, the Department must establish at least one Center in each of the 10 geographic regions served by the Department's Regional Educational Laboratories authorized under section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The proposed funding for Centers established under the ETAA must take into consideration the school-age population, proportion of economically disadvantaged students, increased cost burdens of service delivery in rural areas, and number of schools identified for improvement under ESEA section 1111(d).

Section 203(d) of the ETAA directs the Centers to provide assistance to

schools funded by the Bureau of Indian Education (BIE). Additionally, pursuant to authority granted to the Secretary in Title III of Division H of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113), and the Consolidated Appropriations Acts for 2017 through the last act in 2023, Comprehensive Center services have been provided to the BIE and schools within its jurisdiction.

The Department last conducted a competition in 2019 and made five-year awards to 19 Regional Centers and one National Comprehensive Center (National Center). The 19 Regional Centers provide high-quality intensive capacity-building services to State clients and recipients to identify, implement, and sustain effective evidence-based (as defined in 34 CFR 77.1) practices that support improved educator and student outcomes. The National Center provides high-quality universal and targeted capacity-building services to address: high-leverage problems identified in Regional Center service plans; common findings from finalized Department monitoring reports or audit findings; implementation challenges faced by States and Regional Centers; and emerging national education trends. Prior Comprehensive Centers competitions also funded national Content Centers, which provide focused services in areas of high national need. An additional Content Center, funded in response to 2016 appropriations language and a new authority in the ESEA, focuses on students at risk of not attaining full literacy skills due to a disability.

Through the proposed priorities in this document, the Department intends to maximize the ability of the Comprehensive Centers to be flexible and responsive to specific State and local client needs while also providing leadership and focused support on issues of national importance to support education systems through a time of continued challenge and transition. This approach aligns with “Raise the Bar: Lead the World”¹—the Department’s recent call to action to all stakeholders to transform pre-kindergarten through postsecondary education and unite around evidence-based strategies that advance educational equity and excellence for all students.

The Department believes that the best way to support State and local efforts in achieving academic recovery and excellence through the Comprehensive Centers Program, consistent with the requirements of both the ESEA and the ETAA, is by supporting the capacity of

State and local educational systems to improve core instruction, enable conditions to accelerate learning and deliver a comprehensive and rigorous education for every student, attend to the social, emotional, and mental wellbeing of school communities, eliminate the educator shortage, provide pathways to multilingualism, and meet the unique needs of all students. The Comprehensive Centers Program is also a critical support to SEAs, LEAs, and schools working to implement evidence-based practices to help accelerate academic recovery in math and literacy, while also promoting equity in student access to educational resources and opportunities to improve student outcomes and close opportunity gaps.

Additionally, and as noted throughout this document, the Department is interested in supporting the implementation of evidence-based approaches to addressing important educational challenges. As an important complement to the research and evaluation and research-related technical assistance function provided by the RELs, under the proposed priorities, Comprehensive Centers would focus capacity-building services on selecting, implementing, and sustaining evidence-based programs, policies, practices, and interventions. In doing this work, Centers must consider clients’ capacity to select and implement evidence-based approaches, particularly for practice areas or populations where available evidence may be limited; help clients with implementation of evidence-based interventions that will help learners accelerate their learning and achievement; and document and disseminate information about their results. More information about using and building evidence is available in the Department’s Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments, which can be found at <https://www2.ed.gov/fund/grant/about/discretionary/2023-non-regulatory-guidance-evidence.pdf>.

To support capacity-building that is customer-focused, results-driven, and most likely to help recipients sustain positive impact on students, we believe the Centers must focus services on helping recipients to (1) identify root causes of, and select the most appropriate and effective evidence-based solutions to address, high-leverage educational problems, (2) create sustainable organizational structures and performance management systems that help recipients set priorities for using their resources to achieve desired results, (3) increase their ability to use those

structures and systems to ensure that LEAs and schools are provided high-quality services and supports, (4) support the implementation and scaling of evidence-based strategies in LEAs and schools, (5) identify and implement a continuum of supports and interventions to address the specific and varying needs of LEAs and schools, (6) support the sustainability of State- and local-led approaches, and (7) contact and engage with entities that have not asked for targeted support but may be in need of it based on available data.

We believe three tiers of services can be offered: (1) universal, (2) targeted, and (3) intensive. Within the proposed priorities for the Comprehensive Centers, Regional Centers would specialize in providing intensive supports, whereas National and Content Center(s) would primarily provide targeted and universal services.

Consistent with the RAC findings and recommendations and the requirements in the ESEA and ETAA, the proposed priorities address service delivery in all tiers related to the teaching and learning of all children, including those with disabilities and who are English Learners and multilingual; supporting school improvement activities; maximizing flexibility and responsiveness; and enabling more coherent, coordinated, and efficient service delivery to all States, while minimizing duplication of services across 14 Regional Centers, 4 Content Centers, and one National Center. Under the proposed priorities, Regional Centers and the National Center would address critical needs related to teaching and learning, while remaining flexible to address emerging needs, enhancing the ability of the Department to provide focused services in areas of high national need through the Content Centers. Such delineation would support a balance of responsiveness and coherent, coordinated, and efficient service delivery across Comprehensive Centers.

National, Content, and Regional Comprehensive Centers

Under the proposed priorities, the Comprehensive Centers would operate as a network comprised of National and Content Centers that identify and provide scalable solutions at the national level that can be replicated in States, and Regional Centers that serve as the entry point to the network and focus on providing individualized, intensive, and responsive support to meet the specific needs of States and systems within their regions.

First, under the proposed priorities, the National Center would address

¹ <https://www.ed.gov/raisethebar>.

educational issues related to instruction, learning, and improvement at a national level. Every State and LEA has a set of policies, programs, and systems that relate to each of these areas. The multitude of State and local needs and priorities identified by the RACs associated with aligning instruction, assessment, accountability, school improvement, school climate and environment, and addressing opportunity gaps are interconnected. The Department believes that one National Center can most effectively support these interconnected needs using an integrated technical assistance approach that models and supports alignment within the agencies it serves.

The National Center would also support the implementation and scale-up of evidence-based practices across the Nation. For example, the National Center might begin by convening practitioners and education system leaders who were successfully addressing a common need using one or more evidence-based practices to elicit practitioner and leader feedback about their perceived barriers and success factors in implementing those practices. Using that feedback, the National Center could then develop and disseminate resources and tools that supported broader implementation of the practices, getting buy-in from stakeholders and supporting LEAs in change management and professional development. The National Center would disseminate these effective universal capacity-building resources and tools nationally and through the Regional Centers and other Federal technical assistance providers (federally funded providers), to provide targeted opportunities for SEA and LEA peers to work together to apply and implement them.

Additionally, the National Center would serve as the core of the Comprehensive Center Network (CCNetwork), which would enable it to identify common implementation challenges and emerging national education issues facing States across regions and content areas and to coordinate support among Regional and Content Centers. In this role, the National Center's activities could include facilitating peer learning among Centers and their clients, and identifying best practices in providing and scaling effective capacity-building services that will enhance the effectiveness of services provided across the network. The National Center would also most effectively cooperate with other federally funded providers to identify gaps in services where the National Center may provide needed support and avoid duplication of

services across Federal investments. Finally, the National Center would most effectively disseminate resources from the CCNetwork to potential recipients.

To effectively serve in this role, under the proposed requirements and selection criteria, the National Center must have expertise in implementation science, adult learning, and developing effective training materials for adults, to enable it to design effective universal capacity-building tools to assist Regional Centers in taking effective practices to scale within their States.

Under the proposed priorities, the National Center would provide services to SEAs, LEAs, REAs, TEAs, and other recipients, in addition to Regional and Content Centers, to address identified national needs. Accordingly, under the proposed requirements, Regional Centers must be poised to share timely information from a variety of regional stakeholders about their capacity needs with the National Center and must reserve a portion of their time to support their States in participating in targeted capacity-building services facilitated through National or Content Centers and implementing the tools and resources the National and Content Centers produce.

Under the proposed priorities, Regional Centers would serve as the entry point for States to the CCNetwork and support States in navigating available support from the CCNetwork and other federally funded providers. The Department acknowledges the importance of aligning Federal supports to State and local needs within each identified region; therefore, we propose closely aligning these centers to the existing REL regions, while also enhancing support for States and recipients with higher needs or special initiatives being undertaken by State, intermediate, or local educational agencies, or BIE-funded schools, as appropriate, which may require special assistance from the Regional Center.

In turn, under the proposed priorities, the Content Centers funded under this program would work to increase the depth of knowledge and expertise available to Regional Centers, SEAs, and LEAs in key areas of high national importance and need. Content Centers would complement the work of the Regional Centers by providing targeted, universal, and, where appropriate, intensive capacity-building services, including information, publications, tools, and specialized technical assistance based on evidence-based practices, in their specific content area. The Content Centers would also play a key role in improving efficiency in developing and disseminating technical

assistance by, for example, avoiding the duplication and higher costs of parallel efforts by two or three Regional Centers. Content Centers must have national subject matter expertise and practitioner experience to ensure both the ability to draw on the latest research and evidence related to the area of need, as well as to provide high-quality assistance that draws from the experience of professionals who have successfully led State and local agencies and provided successful high-quality capacity-building services.

To meet specific areas of need, including topics identified by the RACs and through monitoring of ESEA programs that are not otherwise served by the National Center or other Department investments, the Assistant Secretary proposes funding priorities for four Content Centers: (1) the Center on English Learners and Multilingualism, (2) the Center for Early School Success, (3) the Center on Fiscal Equity, and (4) the Center on Strengthening and Supporting the Educator Workforce.

The Department also acknowledges that some important priorities identified through Tribal consultation and by the RACs are already being addressed through other significant Federal investments in technical assistance. Such investments include substantial support provided through technical assistance centers funded under Title IV, Part A of the ESEA and the Bipartisan Safer Communities Act (BSCA) for promoting student well-being and mental health, establishing safe and supportive school communities, and addressing school climate and chronic absenteeism; investments in family engagement through the Statewide Family Engagement Centers; and significant support provided through centers funded under IDEA technical assistance and dissemination programs for children with disabilities. Where services are already being provided, the Department encourages Comprehensive Centers to refer to or partner with those federally funded providers, and to focus Comprehensive Center services on meeting gaps in identified needs that are not yet being addressed through other Federal investments.

Proposed Priority 1—National Comprehensive Center.

Projects that propose to establish a National Center to (1) provide high-quality, high-impact technical assistance and capacity-building services to the Nation that are designed to improve educational opportunities and educator and student outcomes and (2) coordinate the work of the CCNetwork to effectively use program

resources to support evidence use and the implementation of evidence-based (as defined in 34 CFR 77.1) practices to close opportunity gaps and improve educational outcomes, particularly accelerating academic achievement in math and literacy for all students, and particularly for groups of students with the greatest need, including students from low-income families and students attending schools implementing comprehensive support and improvement or targeted or additional targeted support and improvement activities under section 1111(d) of the ESEA, in a manner that reaches and supports as many SEAs, REAs, TEAs, LEAs, and schools in need of services as possible.

The National Center must design and implement an effective approach to providing high-quality, useful, and relevant universal, targeted, and, as appropriate and in partnership with Regional Centers, intensive capacity-building services that are likely to achieve desired recipient outcomes. The approach must be driven by adult learning strategies and incorporate implementation, improvement, and systems change frameworks. The approach must promote alignment across interconnected areas of need, programs, and agency systems.

The National Center must implement effective strategies for coordinating with the Regional Centers and Content Centers to assess educational needs; coordinate common areas of support across Centers; share and disseminate information about CCNetwork services, tools, and resources to maximize the reach of the CCNetwork across clients and education stakeholders; coordinate with other federally funded providers regarding the work of the CCNetwork and support navigation of available support for clients; and support the selection, implementation, scale-up, and dissemination of evidence-based practices that will improve educational outcomes, particularly academic achievement in math and literacy, and close opportunity gaps for all students, particularly for groups of students with the greatest need, including students from low-income families and students attending schools implementing comprehensive support and improvement or targeted or additional targeted support and improvement activities under section 1111(d) of the ESEA.

Services must address: common high-leverage problems identified in Regional Center service plans (as outlined in the Program Requirements for the National Center); findings from finalized Department monitoring reports or audit

findings; implementation challenges faced by States and LEAs related to teaching, learning, and development; needs of schools designated for improvement; needs related to closing achievement and opportunity gaps; needs to improve core instruction; and emerging education topics of national importance.

The National Center must provide universal and targeted capacity-building services that demonstrably assist SEAs, REAs, TEAs, LEAs, and Regional Center clients and recipients to—

(1) Implement approved ESEA Consolidated State Plans, with preference given to implementing and scaling evidence-based programs, practices, and interventions that directly benefit entities that have high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA sec. 1113(a)(5));

(2) Implement and scale up evidence-based programs, practices, and interventions that lead to the increased capacity of SEAs and LEAs to address the unique educational challenges and improve outcomes of schools implementing comprehensive support and improvement activities or targeted or additional targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d)) and their students;

(3) Implement State accountability and assessment systems consistent with Title I, Part A of the ESEA (ESEA section 1111(b)–(d));

(4) Implement and scale up evidence-based programs, practices, and interventions that improve instruction and outcomes in core subjects, including math and literacy instruction;

(5) Address the unique educational obstacles faced by rural and Tribal students; and

(6) Implement and scale up evidence-based programs, practices, and interventions that address other emerging education topics of national importance that are not being met by another federally funded provider (e.g., best practices in the use of education technology).

An applicant under this priority must demonstrate how it will cultivate a network of national subject matter experts from a diverse set of perspectives or organizations to provide capacity-building support to Regional Centers and clients regarding the ESEA topical areas listed above and other emerging education issues of national importance.

Proposed Priority 2—Regional Centers.

Projects that propose to establish Regional Centers to provide high-quality, intensive capacity-building services to State and local clients and recipients to assist them in selecting, implementing, and sustaining evidence-based programs, practices, and interventions that will result in improved educator practice and student outcomes, especially in math and literacy.

Each Regional Center must provide high-quality, useful, and relevant capacity-building services that demonstrably assist clients and recipients in—

(1) Carrying out Consolidated State Plans approved under the ESEA, with preference given to the implementation and scaling up of evidence-based programs, practices, and interventions that directly benefit recipients that have high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA sec. 1113(a)(5)) and recipients that are implementing comprehensive support and improvement activities or targeted or additional targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d));

(2) Implementing, scaling up, and sustaining evidence-based programs, practices, or interventions that focus on key initiatives that lead to LEAs and schools improving student outcomes. Key initiatives may include implementing evidence-based practices to help accelerate academic recovery in math and literacy (include, high-impact tutoring, high-quality summer and after-school programming, and effective interventions to reduce chronic absenteeism), improving core instruction, implementing innovative approaches to assessment, responding to educator shortages, or developing aligned and integrated agency systems;

(3) Addressing the unique educational obstacles faced by underserved populations, including students from low-income families, students of color, students living in rural areas, Tribal students, English learners, students in foster care, migratory children, immigrant children and youth, and other student populations with specific needs defined in the ESEA; and

(4) Improving implementation of ESEA programs by addressing corrective actions or results from audit findings and ESEA program monitoring, conducted by the Department, that are programmatic in nature, at the request of the client.

Regional Centers must effectively work with the National Center and Content Centers, as needed, to assist

clients in selecting, implementing, and sustaining evidence-based programs, policies, practices, and interventions; and must develop cost-effective strategies to make their services available to as many SEAs, REAs, TEAs, LEAs, and schools within the region in need of support as possible.

Applicants must propose to operate a Regional Center in one of the following regions:

Region 1 (Northeast): Connecticut, Massachusetts, Maine, New Hampshire, New York, Rhode Island, Vermont

Region 2 (Islands): Puerto Rico, Virgin Islands

Region 3 (Mid-Atlantic): Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania

Region 4 (Appalachia): Kentucky, Tennessee, Virginia, West Virginia

Region 5 (Southeast): Georgia, North Carolina, South Carolina

Region 6 (Gulf): Alabama, Florida, Mississippi

Region 7 (Midwest): Indiana, Michigan, Ohio, Illinois, Iowa, Minnesota, Wisconsin

Region 8 (Central): Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming

Region 9 (Southwest): Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region 10 (West): Arizona, California, Nevada, Utah

Region 11 (Northwest): Alaska, Oregon, Washington, Idaho, Montana

Region 12 (Pacific 1): American Samoa, Hawaii, Republic of the Marshall Islands

Region 13 (Pacific 2): Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Palau

Region 14: Bureau of Indian Education
Proposed Priority 3—Content Centers.

Projects that propose to establish Content Centers to provide targeted and universal capacity-building services in a designated content area of expertise to SEA, REA, TEA, and LEA clients designed to improve educational opportunities, educator practice, and student outcomes.

Content Centers must be designed to build the capacity of practitioners, education system leaders, public schools serving preschool through 12th grades (P–12) (which may include Head Start and community-based preschool), LEAs, and SEAs to use evidence in the designated content area. Capacity-building services may include, for example, developing evidence-based products and tools, and providing services that directly inform the use of

evidence in a State or local policy or program or improved program implementation to achieve desired educational outcomes. Services must promote the use of the latest evidence, including research and data; be effectively delivered using best practices in technical assistance and training; and demonstrate a rationale for how they will result in improved recipient outcomes.

Content Centers must support Regional Centers, as needed, with subject matter expertise to enhance the intensive capacity-building services provided by the Regional Centers or to design universal or targeted capacity-building services to meet identified SEA, REA, TEA, or LEA needs.

Content Centers must effectively coordinate and align targeted capacity-building services with the National Center, Regional Centers, and other federally funded providers, as appropriate, to address high-leverage problems and provide access to urgently needed services to build Centers' capacity to support SEAs and local clients. Content Centers must effectively coordinate with the National Center, Regional Centers, and other federally funded providers to assess potential client needs, avoid duplication of services, and widely disseminate products or tools to practitioners, education system leaders, and policymakers in formats that are high quality, easily accessible, understandable, and actionable to ensure use of services by as many SEA, REA, TEA, and LEA recipients as possible.

Applicants must propose to operate a Content Center in one of the following areas:

(1) *English Learners and Multilingualism.* The Center on English Learners and Multilingualism must provide universal, targeted, and, as appropriate and in partnership with Regional Centers, intensive capacity-building services designed to support SEAs and LEAs to meet the needs of English learners, including the needs of English learners with disabilities, and increase access to high-quality language programs so that they, along with all students, have the opportunity to become multilingual. The Center must also support the selection, implementation, and scale-up of evidence-based practices, in coordination with the National Clearinghouse for English Language Acquisition, related to meeting the needs of English learners.

(2) *Early School Success:* The Center for Early School Success must provide universal, targeted, and, as appropriate

and in partnership with Regional Centers, intensive capacity-building services designed to support SEAs and LEAs to implement comprehensive and aligned preschool to third-grade (P–3) early learning systems in order to increase the number of children who experience success in early learning and achievement, including developmentally informed and evidence-based instructional practices in social emotional development, early literacy, and math. The Center must support the selection, implementation, and scale-up of programs, policies, and practices, informed by research on child development, that can strengthen P–3 learning experiences and support social, emotional, cognitive, and physical development.

(3) *Fiscal Equity:* The Center on Fiscal Equity must provide universal, targeted, and, as appropriate and in partnership with Regional Centers, intensive capacity-building services designed to support SEAs and LEAs in strengthening equitable and adequate school funding strategies, including the allocation of State and local funding; improving the quality and transparency of fiscal data at the school level; and prioritizing supports for students and communities with the greatest need. The Center must support the selection, implementation, and scale-up of evidence-based programs, policies, and practices that promote responsible fiscal planning and management and effective and permissible uses of ESEA formula funds, including through combining those funds with other available and allowable Federal, State, and local funds (“blending and braiding”) and considering how ESEA funds may interact with and complement other Federal programs, such as IDEA, Medicaid, and Head Start to improve student opportunities and outcomes.

(4) *Strengthening and Supporting the Educator Workforce:* The Center on Strengthening and Supporting the Educator Workforce must provide universal, targeted, and, as appropriate and in partnership with Regional Centers, intensive capacity-building services designed to support SEAs to support their LEAs and schools in designing and scaling practices that establish and enhance high-quality, comprehensive, evidence-based, and affordable educator pathways, including educator residency and Grow Your Own programs, as well as emerging pathways into the profession such as registered apprenticeship programs for teachers and that improve educator diversity, recruitment, and retention. The Center must support the selection, implementation, and scale-up of

evidence-based programs, policies, and practices that are likely to support States and LEAs in addressing educator shortages and providing all students with highly qualified educators across the P–12 continuum, including through increased compensation and improved working conditions; high-quality, comprehensive, evidence-based, and affordable educator preparation, including educator residency and Grow Your Own programs, as well as emerging pathways into the profession such as registered apprenticeship programs for teachers; providing opportunities for teacher leadership and career advancement; ongoing professional learning throughout educators' careers, including implementing evidence-based strategies for effective teaching and learning; strengthening new teacher induction; and supporting and diversifying the educator workforce, as well as other actions to improve learning conditions and educator well-being.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

Background

The Department proposes program and application requirements to support effective administration of Comprehensive Center services.

The proposed application requirements are designed to complement the proposed program requirements. Under the proposed program requirements, Centers would

be required to model best practices in implementation design and performance management. Under the proposed application requirements, applicants must demonstrate how they will model best practices, including by describing strategies to identify the root causes driving high-leverage problems, select the evidence-based practices that most effectively address those causes, and implement effective practices in implementation design and performance management to achieve desired outcomes.

In meeting the proposed program requirement for annual service plans, proposed capacity-building services must be in service of outcomes that (a) are co-designed with clients; (b) address authentic needs based on needs-sensing activities; (c) are clear and measurable; and (d) have associated achievable, specific targets. Long-term goals should serve as a “north star” for the work of the Centers and should be in service of their clients' goals. This requires highly inclusive needs sensing processes that include relevant stakeholders and recipients in the process of defining the needs to be addressed, and disciplined processes by which Centers help clients to define the specific outcomes they aim to achieve that will result in improved educational outcomes.

In addition, the proposed requirements for stakeholder engagement would ensure that meaningful efforts are made to engage with, and incorporate the views of, a broad range of potential clients, including those who did not initially request support but may benefit from it based on available data. These stakeholder engagement requirements would be reinforced through the proposed communication and dissemination requirements, which would require Centers to ensure services are broadly disseminated to reach as many potential clients as possible. Finally, the proposed program requirements for performance management would require Centers to quantify and collect data on the use, reach, and impact of Center services in alignment with the performance measures for this program.

Effective service delivery requires highly qualified personnel who bring both subject matter content and technical expertise. Under the proposed program requirements, subject matter experts must include professionals with significant and demonstrated scholarly expertise in content areas and approaches relevant to the work the Center undertakes as well as practitioners who have significant—and, ideally, recent—experience directly

leading State or local educational systems. Under the proposed application requirements, applicants must describe how highly qualified personnel will combine subject matter expertise with strong demonstrated expertise providing effective technical assistance through teaching and leading professional development in those content areas.

Additionally, successfully managing a Center, developing deep customer-focused relationships with States, and managing complex projects with varied stakeholders requires significant investment of personnel time and leadership. Under the proposed program requirements, Centers must strive to achieve as close to full-time equivalency (FTE) as practicable for all personnel in key leadership and service-delivery roles, and at least .75 FTE for the Program Director, to help ensure that sufficient leadership and expertise are available to support effective management and service provision. Additionally, the proposed program requirements for the National Center require at least 1 FTE Project Director, or co-Directors each with at least .75 FTE, to ensure sufficient leadership capacity for the project.

While Centers assist clients in selecting evidence-based practices, they additionally help them develop and implement practices that may become models to others. To expand the reach of the Centers, each Center must effectively curate and disseminate effective practices. Under the proposed program requirement for communications and dissemination plans, Centers must intentionally plan for how information will be used and by whom, and what strategies most effectively engage their target audiences to expand the reach and potential impact of their services, tools, and products. And under the proposed program requirement for performance management systems, Centers must measure and report on the effectiveness of these strategies, including the reach of their services, to monitor and improve the efficacy of their communication and dissemination strategies.

In providing services within the CCNetwork, and in alignment with other providers who are servicing the same clients, Centers must approach collaboration intentionally to reduce client burden in interacting with multiple providers, and to ensure that Federal resources are being used most efficiently and effectively to meet a variety of needs across federally funded providers. While each Center may have a specific recipient type or area of

expertise, all work in service of the same goals. To avoid duplication wherever possible, under the program requirements for annual service plans and partnership agreements, Centers must coordinate common activities, such as needs sensing with State agency leadership, with other federally funded providers serving their intended clients, to the extent practicable, and must establish processes to identify which Centers may be best suited to meet expressed and identified needs.

Under the proposed program requirements relating to CCNetwork peer learning, Centers must share with other regions knowledge of effective practices and approaches to capacity-building used with their clients. We believe that Centers will benefit by learning from each other and that this requirement would promote the achievement of each Center's intended outcomes, as well as enhance the overall impact of the CCNetwork.

The Department recognizes that we cannot anticipate every need a State may have, and that critical needs could emerge throughout the grant period that will require Centers to rapidly respond to meet new demands. For that reason, the Department proposes to require each Center to reserve funds annually to address emerging needs.

Proposed Program Requirements:

The Assistant Secretary proposes the following program requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Program Requirements for All Centers: National, Regional, and Content Center grantees under this program must:

(1) Develop service plans annually for carrying out the technical assistance and capacity-building activities to be delivered by the Center in response to educational challenges facing students, practitioners, and education system leaders. Plans must include: High-leverage problems to be addressed, including identified client needs, capacity-building services to be delivered, time-based outcomes (*i.e.*, short-term, mid-term, long-term), responsible personnel, key technical assistance partners, milestones, outputs, dissemination plans, fidelity measures, if appropriate, and any other elements specified by the Department. The annual service plans must be an update to the Center's five-year plan submitted as part of the initial grant application and account for changes in client needs.

(2) Develop and implement capacity-building services, including tools and resources, in partnership with State and local clients and recipients to reflect

and address specific client needs and contexts and promote sustainable evidence utilization to address identified educational challenges.

(3) Develop and implement an effective performance management system that integrates continuous improvement to promote effective achievement of client outcomes. The system must include methods to measure and monitor progress towards agreed upon outcomes, outputs, and milestones and to measure the reach, use, and impact of the services being delivered to ensure capacity-building services are implemented as intended, reaching intended clients and recipients, and achieving desired results. Progress monitoring must include periodic assessment of client satisfaction and timely identification of changes in State contexts that may impact the project's success. The performance management system must include strategies to report on defined program performance measures.

(4) Develop and implement a stakeholder engagement system to regularly communicate, engage, and coordinate, using feedback to inform improvement, across organizational levels (Federal, State, and local), and facilitate regular engagement of stakeholders involved in or affected by proposed services. This system must provide regular and ongoing opportunities for outreach activities (*e.g.*, regular promotion of services and products to potential and current recipients, particularly at the local level) and regular opportunities for engagement with potential beneficiaries or participants involved in or impacted by proposed school improvement activities (*e.g.*, students, parents, educators, administrators, Tribal leaders) to ensure services reflect their needs.

(5) Develop and implement a high-quality personnel management system to efficiently obtain and retain the services of nationally recognized technical and content experts and other consultants with direct experience working with SEAs, REAs, and LEAs. The Center must ensure that personnel have the appropriate expertise to deliver high-quality capacity-building services that meet client and recipient need and be staffed at a level sufficient for achieving the goals of its assigned projects and responsibilities.

(6) Develop and implement a comprehensive communication and dissemination plan that includes strategies to disseminate information in multiple formats and media (*e.g.*, evidence-based practice tool kits, briefs, informational webinars) including

through CCNetwork websites, social media, and other methods as appropriate, and strategies to monitor the use of the information it disseminates. The plan must include approaches to determine, at the outset of each project, in consultation with clients, the most effective modality and methodology for capturing evidence-based practices and lessons learned, dissemination strategies customized and based on needs of the targeted audience(s), and strategies to monitor and measure audience engagement and use of information and products of the Center. Centers must work with partners to disseminate products through networks in which the targeted audiences are most likely to seek or receive information with the goal of expanding the reach of Centers to the largest number of recipients possible.

(7) Identify and enter into partnership agreements with federally funded providers, State and national organizations, businesses, and industry experts, as applicable, to support States in the implementation and scaling-up of evidence-based programs, practices, and interventions, as well as reduce duplication of services and engagement burden to States. Where appropriate, the agreements should document how the partnerships might advance along a continuum to effectively meet program and client goals.

(8) Within 90 days of receiving funding for an award, demonstrate to the Department that it has secured client and partner commitments to carry out proposed annual service plans.

(9) Participate in a national evaluation of the Comprehensive Centers Program.

Program Requirements for National Comprehensive Center: In addition to the requirements for all Centers, National Center grantees under this program must:

(1) Design and implement robust needs sensing activities and processes to consult with and integrate feedback from the Department, Regional and Content Centers, and advisory boards that surface high-leverage problems that could be effectively addressed in developing the national annual service plan.

(2) Collaborate with Regional and Content Centers to implement universal and targeted services for recipients to address high-leverage problems identified in the annual service plan. In providing targeted services (*e.g.*, multi-State and cross-regional peer-to-peer exchanges or communities of practice on problems), the National Center must provide opportunities for recipients to learn from their peers and subject matter experts and apply evidence-based

practices and must define tangible, achievable capacity-building outcomes for recipient participation. Universal services must be grounded in evidence-based practices, be produced in a manner that recipients are most likely to use, be shared via multiple mechanisms such as the CCNetwork website, social media, and other channels as appropriate, and be appropriate for a variety of education stakeholders, including the general public.

(3) Develop and implement a strategy to recruit and retain a comprehensive cadre of national subject matter experts that includes qualified education practitioners, researchers, policy professionals, and other consultants with (1) direct experience working in or with SEAs, REAs, and LEAs and (2) in-depth expertise in specific subject areas with an understanding of State contexts available to support universal and targeted services of the National Center and intensive capacity-building services of Regional Centers. Cadre experts must have a proven record of designing and implementing effective capacity-building services, using evidence effectively, and delivering quality adult learning experiences or professional development experiences that meet client and recipient needs and must have recognized subject matter expertise including publishing in peer-reviewed journals and presenting at national conferences on the ESEA programs or content areas for which they are engaged as experts to provide universal, targeted, or intensive capacity building.

(4) Reserve not less than one half of the annual budget to provide universal, targeted, and, as needed, intensive services to address topics 1–5 enumerated in the priority for this Center and as approved by the Department in the annual service plan.

(5) Include in the communications and dissemination plan, and implement, processes for outreach activities (e.g., regular promotion of services and products to clients and potential and current recipients), use of feedback loops across organizational levels (Federal, State, and local), regular engagement and coordination with the Department, Regional Centers, and partner organizations (e.g., federally funded providers), and engagement of stakeholders involved in or impacted by proposed school improvement activities.

(6) Design and implement communications and dissemination vehicles for the CCNetwork, including maintaining the CCNetwork website with an easy-to-navigate design that meets government or industry recognized standards for accessibility,

including compliance with Section 504 of the Rehabilitation Act of 1973, and maintain a consistent media presence, in collaboration with Regional and Content Centers and the Department Communications office, that promotes increased engagement.

(7) Develop peer learning opportunities for Regional and Content Center staff (and other partners, as appropriate) to address implementation challenges and scale effective practices to improve service delivery across the CCNetwork.

(8) Collect and share information about services provided through the CCNetwork for the purpose of coordination, collaboration, and communication across Centers and other providers, including an annual analysis of service plans to identify and disseminate information about services rendered across the CCNetwork.

(9) Ensure that the Project Director is capable of managing all aspects of the Center and is either staffed at 1 FTE or there are two Co-Project Directors each at a minimum of 0.75 FTE. The Project Director or Co-Project Directors and all key personnel must be able to provide services at the intensity, duration, and modality appropriate to achieving agreed-upon milestones, outputs, and outcomes described in annual service plans.

(10) Reserve not less than one third of the budget to address the program requirements for CCNetwork coordination (requirements 5 through 8).

Program Requirements for Regional Centers: Regional Center grantees under this program must:

(1) Actively coordinate and collaborate with the REL serving their region. Coordination must include annual joint need sensing in a manner designed to comprehensively inform service delivery across both programs while reducing burden on State agencies. The goals of this coordination and collaboration are to share, synthesize, and apply information, ideas, and lessons learned; to enable each type of provider to focus on its designated role; to ensure that work is non-duplicative; to streamline and simplify service provision to States and LEAs; and to collaborate on projects to better support regional stakeholders.

(2) Consult with a broad range of stakeholders, including chief State school officers and other SEA leaders, TEAs, LEAs, educators, students, and parents, and integrate their feedback in developing the annual service plan to reflect the needs of all States (and to the extent practicable, of LEAs) within the region to be served.

(3) In developing the annual service plan, ensure services are provided to support students and communities with the highest needs, including recipients: (i) that have high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA sec. 1113(a)(5)); (ii) that are implementing comprehensive support and improvement activities or targeted or additional targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d)); (iii) in rural areas; and (iv) serving student populations with demonstrated needs unmet or under-met through other Federal, State, or local interventions.

(4) Explore and provide opportunities to connect peers within and across regions.

(5) Collaborate with the National Center and Content Centers, as appropriate, including to support client and recipient participation in targeted capacity-building services, and obtain and retain the services of nationally recognized content experts through partnership with the National Center, Content Centers, or other federally funded providers.

(6) Support the participation of Regional Center staff in CCNetwork peer learning opportunities, including sharing information about effective practices in the region, to extend the Center's reach to as many SEAs, REAs, LEAs, and schools in need of services as possible while also learning about effective capacity-building approaches to enhance the Center's ability to provide high-quality services.

(7) Within 90 days of receiving funding for an award, provide to the Department copies of partnership agreements with the REL(s) in the region that the Center serves and, as appropriate, other Department-funded technical assistance providers that are charged with supporting comprehensive, systemic changes in States or Department-funded technical assistance providers with particular expertise (e.g., early learning or instruction for English language learners) relevant to the region's service plan. Partnership agreements must define processes for coordination and support collaboration to meet relevant program requirements.

(8) Be located in the region the Center serves. The Project Director must be capable of managing all aspects of the Center and be either at a minimum of 0.75 FTE or there must be two Co-Project Directors each at a minimum of 0.5 FTE. The Project Director or Co-Project Directors and key personnel must also be able to provide on-site

services at the intensity, duration, and modality appropriate to achieving agreed-upon milestones, outputs, and outcomes described in annual service plans.

Program Requirements for Content Centers: Content Center grantees under this program must:

(1) Consult and integrate feedback from the National and Regional Centers in developing the annual service plan to inform high-quality tools, resources, and overall technical assistance in priority areas.

(2) Collaborate with Regional Centers to address specific requests for assistance from States within the regions and strengthen Regional Center staff knowledge and expertise on the evidence base and effective practices within its specific content area.

(3) Produce high-quality universal capacity-building services, and identify, organize, select, and translate existing key research knowledge and Department guidance related to the Center's content area and examples of workable strategies and systems for implementing provisions and programs that have produced positive outcomes for schools and students, and communicate the information in ways that are highly relevant and highly useful to State- and local-level policy makers and practitioners.

(4) Collaborate with the National Center and Regional Centers to convene States and LEAs, researchers, and other experts, including other Federal entities and providers of technical assistance as identified by the Department, to learn from each other about practical strategies for implementing ESEA provisions and programs related to the Center's area of focus.

(5) Support the participation of Content Center staff in CCNetwork peer learning opportunities with the goal of providing high-quality services while reaching as many SEAs, REAs, LEAs, and schools in need of services as possible.

(6) Within 90 days of receiving funding for an award, provide copies to the Department of partnership agreements with Department-funded technical assistance providers that are charged with supporting comprehensive, systemic changes in States or Department-funded technical assistance providers with particular expertise relevant to the Center's content area. Partnership agreements must define processes for coordination and support collaboration to meet relevant program requirements.

Proposed Application Requirements: Application Requirements for All Centers:

(1) Present a plan for operating the Comprehensive Center that clearly establishes the critical educational challenges proposed to be addressed by the Center, the impact the Center plans to achieve, including the proposed scope of services in relation to the number of SEAs, REAs, TEAs, LEAs, and, as appropriate, schools served, with respect to specific State and local outcomes that would represent significant achievement in advancing the efforts of State and local systems to improve educational opportunities and student outcomes, and proposes how the Center will efficiently and effectively provide appropriate capacity-building services to achieve the desired outcomes.

(2) Present applicable regional, State, and local educational needs, including relevant data demonstrating the identified needs, and including the perspectives of underrepresented groups, that could be addressed through capacity-building to implement and scale up evidence-based programs, practices, and interventions.

(3) Demonstrate how key personnel possess expert knowledge of statutory requirements, regulations, and policies related to ESEA programs, current education issues, and policy initiatives for supporting the implementation and scaling up of evidence-based programs, practices, and interventions.

(4) Demonstrate expertise in providing highly relevant and highly effective technical assistance (e.g., that is co-designed with clients; demonstrably addresses authentic needs based on needs-sensing activities; is timely, relevant, useful, clear and measurable; and results in demonstrable improvements or outcomes), including by demonstrating expertise in the current research on adult learning principles, coaching, and implementation science that will drive the applicant's capacity-building services; how the applicant has successfully supported clients to achieve desired outcomes; and how the applicant will promote self-sufficiency and sustainability of State- and local-led school improvement activities.

(5) Present a logic model (as defined in 34 CFR 77.1) informed by research or evaluation findings that demonstrates a rationale (as defined in 34 CFR 77.1) explaining how the project is likely to improve or achieve relevant and expected outcomes. The logic model must communicate how the proposed project would achieve its expected outcomes (short-term, mid-term, and long-term), and provide a framework for both the formative and summative evaluations of the project consistent

with the applicant's performance management plan. Include a description of underlying concepts, assumptions, expectations, beliefs, and theories, as well as the relationships and linkages among these variables, and any empirical support for this framework.

(6) Present a management plan that describes the applicant's proposed approach to managing the project to meet all program requirements related to needs assessment, stakeholder engagement, communications and dissemination, and personnel management.

(7) Present a performance management plan that describes the applicant's proposed approach to meeting the program requirements related to performance management, including the applicant's proposed strategy to report on defined program performance measures, and describes the criteria for determining the extent to which: capacity-building services proposed in annual service plans were implemented as intended; recipient outcomes were met (short-term, midterm, and long-term); recipient capacity was developed; and services reached and were used by intended recipients.

(8) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OESE program officer. With approval from the program officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Application Requirements for the National Center: In addition to meeting the application requirements for all Centers, a National Center applicant must:

(1) Demonstrate expertise and experience in leading digital engagement strategies to attract and sustain the involvement of education stakeholders, including, but not limited to: implementing a robust web and social media presence and engagement, overseeing customer relations management, providing editorial support to Regional and Content Centers, and utilizing web analytics to improve content engagement.

(2) Describe the proposed approach to providing targeted capacity-building services, including how the applicant intends to collaborate with Regional Centers to identify potential recipients and estimate how many SEAs, REAs, TEAs, and LEAs it has the capacity to

reach; how it will measure the readiness and capacity of potential recipients; and how it will measure the extent to which targeted capacity-building services achieve intended recipient outcomes and result in increased recipient capacity (and specifically, increase capacity in one or more of the four dimensions of capacity-building).

(3) Describe the proposed approach to universal capacity-building services, including how many and which recipients it plans to reach and how the applicant intends to: measure the extent to which products and services developed actually address common problems; support recipients in the selection, implementation, and monitoring of evidence-based practices; improve the use of evidence with regard to emerging national education trends; and build recipient capacity in at least one of the four dimensions of capacity-building.

Application Requirements for Regional Centers:

In addition to meeting the application requirements for all Centers, a Regional Center applicant must—

(1) Describe the proposed approach to intensive capacity-building services, including identification of intended recipients based on available data in each of the content areas identified, alignment of proposed capacity-building services to client needs, and engagement of clients who may not initiate contact to request services. The applicant must also describe how it intends to measure the readiness of clients and recipients to work with the Center; co-design projects and define outcomes; measure and monitor client and recipient capacity across the four dimensions of capacity-building; and measure the outcomes achieved throughout and at the conclusion of a project.

(2) Demonstrate that proposed key personnel have the appropriate expertise to deliver high-quality, intensive services that meet client and recipient needs similar to those in the region to be served.

Application Requirements for Content Centers: In addition to meeting the application requirements for all Centers, a Content Center applicant must—

(1) Describe the proposed approach to carry out targeted capacity-building services that increase the use of evidence-based products or tools regarding the designated content area amongst practitioners, education system leaders, elementary schools and secondary schools, LEAs, and SEAs.

(2) Describe the proposed approach to providing universal capacity-building services, including how it will develop evidence-based products or tools

regarding the designated content area; widely disseminate such products or tools to practitioners, education system leaders, and policymakers in formats that are high quality, easily accessible, understandable, and actionable; identify intended recipients; and align proposed capacity-building services to client needs.

(3) Demonstrate that key personnel have appropriate subject matter and technical expertise to translate evidence into high-quality technical assistance services and products for State and local clients, including expertise applying adult-learning principles and implementation science to the delivery of technical assistance services and products.

Proposed Definitions: The Assistant Secretary proposes the following definitions of “client,” “collaboration,” “coordination,” “English learner,” “key personnel,” and “recipient,” for use in this program in any year in which this program is in effect. We propose these definitions to aid applicants in understanding the intent and purpose of the priorities, requirements, and selection criteria.

We also propose to replace certain terms established in the Notice of Final Priorities, Requirements, Definitions, and Performance Measures published in the **Federal Register** on April 4, 2019 (84 FR 13122) (2019 NFP). Specifically, although the 2019 NFP is not generally intended to be superseded by this proposed action, we are proposing new definitions for the terms “high-leverage problem,” “outcomes,” and “regional educational agency” to better reflect how they are used in this document. Additionally, as established in the 2019 NFP, the term “capacity building services” includes within it definitions for the “four dimensions of capacity-building services” and the “three tiers of capacity-building services.” In this NFP, we propose to define these terms separately. Other than separating these terms, we have not proposed changes to the general term “capacity building services” or the “four dimensions of capacity-building services” as established in the 2019 NFP; however, to reflect how they apply to the proposed priorities in this document, we propose revised definitions for the three tiers of capacity-building services: “intensive capacity-building services,” “targeted capacity-building services,” and “universal capacity-building services.”

We also propose to use, in the proposed priorities, requirements, and selection criteria, the following terms, which are defined in the ESEA: “immigrant children and youth,”

“migratory child,” and “tribal educational agency.”

The proposed priorities, requirements, and selection criteria also incorporate the following terms established for use in this program by the 2019 NFP: “capacity-building services,” “milestone,” and “outputs.” We have included the definitions of those terms in Appendix 1 to this document.

Capacity-building services means assistance that strengthens an individual’s or organization’s ability to engage in continuous improvement and achieve expected outcomes.

Client means the organization with which the Center enters into agreement for negotiated capacity-building services. The client is engaged in defining the high-leverage problems, capacity-building services, and time-based outcomes for each project noted in the Center’s annual service plan. Representatives of clients include but are not limited to Chief State School Officers or their designees, LEA leaders, and other system leaders.

Collaboration means exchanging information, altering activities, and sharing in the creation of ideas and resources to enhance the capacity of one another for mutual benefit to accomplish a common goal.

Coordination means exchanging information, altering activities, and synchronizing efforts to make unique contributions to shared goals.

English learner means an individual who is an English learner as defined in section 8101(20) of the ESEA, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Four dimensions of capacity-building services are:

(1) *Human capacity* means development or improvement of individual knowledge, skills, technical expertise, and ability to adapt and be resilient to policy and leadership changes.

(2) *Organizational capacity* means structures that support clear communication and a shared understanding of an organization’s visions and goals, and delineated individual roles and responsibilities in functional areas.

(3) *Policy capacity* means structures that support alignment, differentiation, or enactment of local, State, and Federal policies and initiatives.

(4) *Resource capacity* means tangible materials and assets that support alignment and use of Federal, State, private, and local funds.

High-leverage problems means problems that (1) if addressed could result in substantial improvements for groups of students with the greatest need, including for students from low-income families and for students attending schools implementing comprehensive support and improvement or targeted or additional targeted support and improvement activities under ESEA section 1111(d)); (2) are priorities for education policymakers, particularly at the State level; and (3) require intensive capacity-building services to achieve outcomes that address the problem.

Immigrant children and youth have the meaning ascribed in section 3201(5) of the ESEA.

Intensive capacity-building services means assistance often provided on-site and requiring a stable, ongoing relationship between the Comprehensive Center and its clients and recipients, as well as periodic reflection, continuous feedback, and use of evidence-based improvement strategies. This category of capacity-building services should support increased recipient capacity in more than one dimension of capacity-building services and result in medium-term and long-term outcomes at one or more system levels.

Key personnel means any personnel considered to be essential to the work being performed on the project.

Migratory child has the meaning ascribed it in section 1309(3) of the ESEA.

Outcomes means demonstrable effects of receiving capacity-building services and must reflect the result of capacity built in at least one of the four dimensions of capacity building. "Outcomes" includes short-term outcomes, medium-term outcomes, and long-term outcomes:

(1) *Short-term outcomes* means effects of receiving capacity-building services after 1 year.

(2) *Medium-term outcomes* means effects of receiving capacity-building services after 2 to 3 years.

(3) *Long-term outcomes* means effects of receiving capacity-building services after 4 or more years.

Recipient means organizations including, but not limited to, SEAs, LEAs, REAs, TEAs, and schools that have received "intensive" and "targeted" capacity-building services and products from Regional Centers, or that received "targeted" or "universal" capacity-building services and products from the National Center or Content Centers.

Regional educational agency means educational agencies that serve regional areas within a State.

Targeted capacity-building services means assistance based on needs common to multiple clients and recipients and not extensively individualized. A relationship is established between the recipient(s), the National Center or Content Center, and Regional Center(s), as appropriate. This category of capacity-building services includes one-time, labor-intensive events, such as facilitating strategic planning or hosting national or regional conferences. It can also include services that extend over a period of time, such as facilitating a series of conference calls, virtual or in-person meetings, or learning communities on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted capacity-building services.

Tribal educational agency has the meaning ascribed in section 6132(b)(3) of the ESEA.

Universal capacity-building services means assistance and information provided to independent users through their own initiative, involving minimal interaction with National or Content Center staff. This category of capacity-building services includes information or products, such as newsletters, guidebooks, policy briefs, or research syntheses, downloaded from the Center's website by independent users, and may include one-time, invited or offered webinar or conference presentations by National or Content Center staff. Brief communications or consultations by National or Content Center staff with recipients, either by telephone or email, are also considered universal services.

Proposed Selection Criteria

The Assistant Secretary proposes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications we will announce the maximum possible points available under each criterion.

Approach to Capacity Building. In determining the overall quality of the approach to capacity building of the proposed project, the Secretary may consider one or more of the following factors.

(1) The extent to which the proposed project represents an exceptional approach to responding to the priority or priorities established for the competition that will likely result in

building SEA capacity to implement State-level initiatives and support local- and school-level initiatives that improve educational outcomes, close achievement gaps, and improve the quality of instruction for all students.

(2) The extent to which the applicant demonstrates an exceptional approach to developing and delivering high-quality, useful, and relevant capacity-building services that—

(a) In the case of an applicant for the National Center, would be expected to assist SEAs, REAs, TEAs, LEAs, and Regional Center clients and recipients, including those who do not proactively request assistance, to address the activities described in the priority;

(b) In the case of an applicant for a Regional Center, would be expected to assist clients and recipients to address the activities described in the priority; and

(c) In the case of an applicant for a Content Center, would be expected to assist clients and recipients, including those who do not proactively request assistance, to address activities described in the priority related to the designated content area.

(3) The extent to which the proposed technical assistance plan provides strategies that address the technical assistance needs of State and local educational systems in key areas of identified need, as evidenced by in-depth knowledge and understanding of—

(a) In the case of an applicant for the National Center, implementation challenges faced by States; evidence-based practices related to teaching, learning, and development; needs of schools designated for improvement; needs to improve core instruction; and emerging education topics of national importance;

(b) In the case of an applicant for a Regional Center, the specific educational goals and priorities of the States to be served by the applicant, including emerging priorities based on State-led reform efforts, and the applicable State and regional demographics, policy contexts, and other factors and their relevance to improving student outcomes, closing opportunity and achievement gaps, and improving instruction; and

(c) In the case of an applicant for a Content Center, State technical assistance needs and evidence-based practices related to the Content Center priority for which the applicant is applying.

(4) In the case of an applicant for the National Center, the extent to which the capacity-building and management plans propose an exceptional approach

to meeting the requirements for the National Center.

(5) In the case of an applicant for a Regional Center, the extent to which the applicant's capacity-building plan proposes an exceptional approach to meeting the requirements for all Regional Centers.

(6) In the case of an applicant for a Content Center, the extent to which the applicant's capacity-building plan proposes an exceptional approach to meeting the requirements for all Content Centers.

Quality of Project Design. In determining the quality of the project design of the proposed center for which the applicant is applying, the Assistant Secretary may consider one or more of the following factors.

(1) The extent to which the proposed performance management system and processes demonstrate an exceptional approach to integrating continuous improvement processes and evaluation that will result in regular and ongoing improvement in the quality of the services provided and increase the likelihood that recipient outcomes are achieved.

(2) The extent to which the proposed stakeholder and communication engagement system is likely to result in a high level of engagement with multiple potential beneficiaries or participants involved in or impacted by the proposed capacity-building activities to ensure that the proposed services reflect their needs, are delivered in a manner that is relevant and useful, and reach the largest number of recipients possible.

(3) The extent to which the proposed personnel management system includes performance management processes for staff, subcontractors, and consultants that enable effective hiring, developing, supervising, and retaining a team of subject-matter and technical assistance experts and professional staff that will effectively meet the needs of the project.

(4) The extent to which the proposed partnerships represent an intentional approach to collaboration that is likely to reduce client burden and to ensure that Federal resources are being used most efficiently and effectively to meet a variety of needs across federally funded providers.

(5) In the case of an applicant for the National Center, the extent to which the proposed project represents an exceptional management approach, including with respect to managing budgets; selecting, coordinating, and overseeing multiple consultant and subcontractor teams; managing communications and dissemination systems; and leading large-scale projects

to coordinate with and deliver tools, training, and capacity-building services to governments, agencies, communities, schools, or other organizations.

Subject Matter and Technical Assistance Expertise. In determining the subject-matter and technical expertise of key project personnel, the Assistant Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Assistant Secretary may consider one or more of the following factors.

(1) The extent to which key project personnel demonstrate the required expertise and relevant knowledge, understanding, and experience in operating and administering State and local educational systems to effectively support recipients.

(2) The extent to which the applicant has demonstrated experience providing high-quality, timely, relevant, and useful technical assistance and capacity-building services to State and local educational systems.

(3) The extent to which the applicant has demonstrated the ability to develop ongoing partnerships with leading experts and organizations nationwide or regionally, as appropriate, that enhance its ability to provide high-quality technical assistance and subject-matter expertise.

(4) In the case of an applicant for the National Center, the extent to which the applicant has demonstrated ability in operating a project of such scope.

Final priorities, requirements, definitions, and selection criteria: We will announce the final priorities, requirements, definitions, and selection criteria in a document in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget

(OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (as of 2023 but to be adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094).

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the

behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

Potential Costs and Benefits

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and whose costs can generally be covered with grant funds. As a result, the proposed regulatory action would not impose any particular burden, except when an entity voluntarily elects to apply for a grant. The proposed priorities, requirements, definitions, and selection criteria would help ensure that the grant program selects a high-quality applicant to implement activities that meet the goals of the program for each Center. We believe these benefits would outweigh any associated costs.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Assistant Secretary invites comments on how to make the proposed priorities, requirements, definitions, and selection criteria easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priorities, requirements, definitions, and selection criteria clearly stated?
- Do the proposed priorities, requirements, definitions, and selection criteria contain technical terms or other wording that interferes with their clarity?
- Could the description of the proposed priorities, requirements, definitions, and selection criteria in the **SUPPLEMENTARY INFORMATION** section of the preamble be more helpful in making the proposed priorities, requirements, definitions, and selection criteria easier to understand? If so, how?
- What else could we do to make the proposed priorities, requirements, definitions, and selection criteria easier to understand?

To send any comments on how the Department could make the proposed priorities, requirements, definitions, and selection criteria easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Assistant Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently

owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary. Therefore, we do not believe that the proposed priorities, requirements, definitions, and selection criteria would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, a competitive grant from the Department.

Paperwork Reduction Act of 1995: These proposed priorities, requirements, definitions, and selection criteria contain information collection requirements that are approved by OMB under OMB control number 1894–0006. The proposed priorities, requirements, definitions, and selection criteria do not affect the currently approved data collection.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

Appendix I

The proposed priorities, requirements, and selection criteria incorporate the following

terms established for use in this program by the 2019 NFP:

Milestone means an activity that must be completed. Examples include: Identifying key district administrators responsible for professional development, sharing key observations from needs assessment with district administrators and identified stakeholders, preparing a logic model, planning for State-wide professional development, identifying subject matter experts, and conducting train-the-trainer sessions.

Outputs means products and services that must be completed. Examples include: Needs assessment, logic model, training modules, evaluation plan, and 12 workshop presentations.

Note: A product output under this program would be considered a deliverable under the open licensing regulations at 2 CFR 3474.20.

[FR Doc. 2024–01257 Filed 1–19–24; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0576; FRL–11679–01–R1]

Air Plan Approval; New Hampshire; Single Source Order for PAK Solutions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision proposes to approve reasonable available control technology (RACT) requirements for PAK Solutions, LLC, located in Lancaster, New Hampshire. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before February 22, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2023–0576 at <https://www.regulations.gov>, or via email to Patrick Lillis at: llillis.patrick@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written

comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Patrick Lillis, Air Quality Branch (AQB), Air and Radiation Division (ARD) (Mail Code 5–MD), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1067; llillis.patrick@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. Background and Purpose
- II. Proposed Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On December 14, 2022, the New Hampshire Air Resources Division (ARD) submitted a revision to its State Implementation Plan (SIP). The revision consists of an order establishing reasonably available control technology (RACT) requirements for PAK Solutions, LLC, located in Lancaster, New Hampshire. The RACT requirements are intended to limit emissions of volatile organic chemicals (VOCs) from the facility.

PAK Solutions, LLC (PAK) conducts commercial printing operations on a variety of plastic and film substrates with VOCs and solvent-containing inks. PAK owns and operates three printing presses that coat a variety of plastic and

film substrates at its facility located on 16 Page Hill Road in Lancaster, New Hampshire. PAK operates a Ship & Shore Regenerative Thermal Oxidizer (RTO) to control VOC emissions from three printing presses. On August 24, 2022, PAK submitted an application for a RACT Order (Order) that would allow the company to generate and use Discrete Emissions Reductions (DERs) in order to comply with the VOC reduction requirements during periods when the RTO is shut down due to maintenance or malfunction.

RACT Order RO–0007 issued on December 14, 2022, by the New Hampshire DES requires PAK Solutions to comply with the VOC control standards specified in Env-A 1215 *Rotogravure and Flexographic Printing*. PAK Solutions shall conduct monitoring and testing activities of the RTO as well as operate and maintain equipment to continuously monitor the temperature of the combustion chamber of the RTO. This Order also outlines the consistent maintenance of the RTO based on the manufacture's recommendations. For times that the capture and control system is unable to meet the 60% capture and 90% reduction requirement specified in Env-A 1215.03(b) and Env-A 1215.04(b)(3) due to a malfunction or during routine maintenance of the RTO, PAK shall be allowed to use DERs in accordance with RACT Order RO–0007. This is for the purpose of complying with the VOC RACT requirements. According to the instructions of RACT Order RO–0007, PAK shall be allowed to generate DERs for VOC emission reductions that exceed the reductions specified in this Order and be allowed to use these DERs for RACT compliance. PAK is also allowed to sell DERs to other entities within the State of New Hampshire. PAK Solutions will also maintain sufficient recordkeeping and timely annual reporting.

Regarding reporting and recordkeeping requirements, PAK is required to submit an annual report to NHDES on the projected use of credits (DERs) for the upcoming calendar year by November 30th. The requirements for this report are outlined in Env-A 3104.08, *Notice of Intent and Use of DERs*. PAK is also required to submit an annual report by April 15th to NHDES on the balance of credits (DERs) for the previous calendar year. The requirements for this report are outlined in Env-A 3103.08, *Notice and Certification of Generation* and Env-A 3104.09, *Notice and Certification of Use*. Records are required to be maintained on site and submitted upon request for control device monitoring and maintenance. PAK Solutions is also

subject to the applicable recordkeeping and reporting requirements of SIP-approved Env-A 900 *Owner or Operator Recordkeeping and Reporting Obligations*, which requires annual reporting to the state of emissions data and other information relating to compliance. Any additional recordkeeping requirements are outlined within Table 5 in the state's permit to operate. Any additional reporting requirements are outlined within Table 6 in the state's permit to operate.

EPA has reviewed RACT Order RO-0007 issued by the New Hampshire DES to PAK Solutions of Lancaster dated December 14, 2022. EPA is proposing an approval of this RACT Order into the New Hampshire SIP.

II. Proposed Action

EPA is proposing to approve RACT Order RO-0007 issued by the New Hampshire DES to PAK Solutions of Lancaster on December 14, 2022, as a revision to the New Hampshire SIP. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference RACT Order RO-0007 dated December 14, 2022, issued by the New Hampshire DES to Pak Solutions of Lancaster, as discussed in Section I of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided

that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement

of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The New Hampshire DES did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Dated: January 18, 2024.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2024-01228 Filed 1-22-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2017-0183; FRL 5120-02-OAR]

RIN 2060-AO18

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors Voluntary Remand Response and 5-Year Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the new source

performance standards (NSPS) and emission guidelines (EG) for large municipal waste combustion (MWC) units. These proposed amendments reflect the results from a reevaluation of the maximum achievable control technology (MACT) floor levels, a 5-year review, and the removal of startup, shutdown and malfunction exclusions and exceptions. These proposed amendments also streamline regulatory language, revise recordkeeping and electronic notification and reporting requirements, re-establish new and existing source applicability dates, clarify requirements for certain air curtain incinerators, close a 2007 proposed reconsideration action, correct certain typographical errors, make certain technical corrections, and clarify certain provisions in the NSPS and EG. These proposed amendments would revise all emission limits in the EG, except for carbon monoxide (CO) limits for two subcategories of combustors, and all nine emission limits in the NSPS. The EPA is reevaluating the MACT floors in response to the EPA's voluntary remand of the large MWC rules following a petitioner's request that the EPA review the MACT floors for large MWC units in consideration of a D.C. Circuit Court decision on MACT floor issues. The 5-year review is required by the Clean Air Act (CAA). The proposed amendments would result in an estimated 14,000 tons per year reduction in regulated pollutants.

DATES: Comments must be received on or before March 25, 2024. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before February 22, 2024.

Public hearing: If anyone contacts us requesting a public hearing on or before January 29, 2024, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2017-0183, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- **Email:** a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2017-0183 in the subject line of the message.

- **Fax:** (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2017-0183.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2017-0183, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand/Courier Delivery:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Charlene E. Spells, Sector Policies and Programs Division (E143-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, P.O. Box 12055, North Carolina 27711; telephone number: (919) 541-5255; email address: spells.charlene@epa.gov.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. If requested, the hearing will be held via virtual platform on February 7, 2024. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 7:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at <https://www.epa.gov/stationary-sources-air-pollution/large-municipal-waste-combustors-lmwc-new-source-performance>.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/> <https://www.epa.gov/stationary-sources-air-pollution/large-municipal-waste-combustors-lmwc-new-source-performance> or contact the public hearing team at (888) 372-8699 or by

email at SPPDpublichearing@epa.gov. The last day to pre-register to speak at the hearing will be February 5, 2024. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: <https://www.epa.gov/stationary-sources-air-pollution/large-municipal-waste-combustors-lmwc-new-source-performance>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to spells.charlene@epa.gov. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/large-municipal-waste-combustors-lmwc-new-source-performance>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by January 30, 2024. The EPA may not be able to arrange accommodations without advanced notice.

Docket: The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2017-0183. All documents in the docket are listed in <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the

exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0183. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to <https://www.regulations.gov/> any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI: Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA’s electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.*, Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of Air Quality Planning and Standards (OAQPS) CBI Office at the email address oaqpscbi@epa.gov, and should include clear CBI markings and note the docket ID. If you need assistance with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqpscbi@epa.gov to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2017–0183. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes,

the EPA defines the following terms and acronyms here:

ACI activated carbon injection
ANSI American National Standards Institute
APCD air pollution control device
ASME American Society of Mechanical Engineers
ASNCR advanced selective noncatalytic reduction
CAA Clean Air Act
CBI Confidential Business Information
Cd cadmium
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emissions monitoring system
CFR Code of Federal Regulations
CISWI Commercial and Industrial Solid Waste Units
CO carbon monoxide
EAV equivalent annualized value
EG emission guidelines
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
HAP hazardous air pollutant(s)
HCl hydrogen chloride
Hg mercury
ICR Information Collection Request
LNTM Low NO_x
MACT maximum achievable control technology
MSW municipal solid waste
MWC municipal waste combustor
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NO_x oxides of nitrogen (nitrogen oxides)
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OTR Ozone Transport Region
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
Pb lead
PCDD/PCDF polychlorinated dibenzodioxins and dibenzofurans (dioxins/furans)
PDF portable document format
PM particulate matter
ppm parts per million
PRA Paperwork Reduction Act
PV present value
QRO Certification for Municipal Solid Waste Combustion Facilities Operator
RFA Regulatory Flexibility Act
RDL representative detection level
RDF/FBC refuse derived fuel fluidized bed combustor
RDF/S refuse-derived fuel stoker combustor
RDF/SS refuse derived fuel semi-suspension or spreader stoker wet process conversion combustor
RIA Regulatory Impact Analysis
SCR selective catalytic reduction
SNCR selective noncatalytic reduction
SO₂ sulfur dioxide
SSM startup, shutdown, and malfunction
tpd tons per day
tpy tons per year
UMRA Unfunded Mandates Reform Act of 1995
UPL upper prediction limit

VCS voluntary consensus standards

Organization of this document. The information in this preamble is organized as follows:

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- E. Executive Order 13132: Federalism
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- I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority and Executive Order 14096: Revitalizing Our Nation's Commitment

to Environmental Justice for All Populations and Low-Income Populations

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The EPA is proposing to revise the standards of performance for new stationary sources (new source performance standards, or NSPS) and emission guidelines (EG) for existing sources for large municipal waste combustors (MWCs) by amending existing standards for the large MWC source category, which comprises incinerators that combust greater than 250 tons per day (tpd) of municipal solid waste (MSW). The EPA is exercising its authority under section 129 of the Clean Air Act (CAA). The proposed standards would increase stringency of existing regulation of emissions of the nine pollutants listed in CAA section 129: cadmium (Cd), mercury (Hg), lead (Pb), particulate matter (PM), hydrogen chloride (HCl), sulfur dioxide (SO₂), polychlorinated dibenzodioxins and dibenzofurans (dioxins/furans or PCDD/PCDF), carbon monoxide (CO), and oxides of nitrogen (NO_x).

2. Summary of the Major Provisions of the Regulatory Action in Question

These proposed amendments reflect the results from a reevaluation of the maximum achievable control technology (MACT) floor, a 5-year review, and the removal of startup, shutdown and malfunction (SSM) exclusions and exceptions. These proposed amendments also streamline regulatory language, revise recordkeeping and electronic reporting requirements, re-establish new and existing source applicability dates, clarify requirements for air curtain incinerators, close a 2007 proposed reconsideration action, correct certain typographical errors, make certain technical corrections, and clarify certain provisions in the NSPS and EG. Specifically, the major proposed amendments would do the following:

- Revise all emission limits in the EG, except for CO limits for two combustor subcategories, and all nine emission limits in the NSPS. With the exception of NO_x, the proposed standards are the result of a reevaluation of the MACT floors in response to the D.C. Circuit's 2008 remand of the large MWC rules.¹ At the same time this reevaluation took place, the EPA conducted a 5-year

review as required by CAA section 129(a)(5). As a result of this review, the EPA is proposing NO_x standards that are more stringent than the reevaluated MACT floor emissions limits for NO_x and are consistent with the recently promulgated Good Neighbor Plan² which set ozone season standards for a significant portion of the large MWC source category.

- Remove the alternative percent reduction standards and NO_x emissions averaging allowance for existing sources and replace them with a numeric concentration-based emission limits only. This would establish a consistent approach to compliance for all facilities.

- Remove SSM exclusions and exceptions and significantly revise monitoring provisions during these periods. For NO_x, SO₂, and CO, where a continuous emissions monitoring system (CEMS) continuously measures the pollutant concentration, we propose eliminating the exclusions of periods of SSM from CEMS data averaging calculations present in the 1995 large MWC rules and replacing them with a monitoring and compliance demonstration approach used in the more recent CAA section 129 rulemaking for Commercial and Industrial Solid Waste Units (CISWI) NSPS and EG.

- Streamline regulatory language to be more accessible than the 1995 large MWC rule. Primarily, convert text describing emission standards and performance testing requirements from paragraphs into tables to facilitate easier implementation and understanding of the requirements.

- Revise recordkeeping and electronic reporting requirements for source owners and operators to submit electronic copies of required performance test reports, performance evaluation reports, semiannual compliance reports, and annual reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports and will improve availability and transparency.

- Re-establish new and existing source applicability so that large MWC units currently subject to the NSPS would become "existing" sources under the proposed amended standards and would be required to meet the revised EG by the applicable compliance date for the revised guidelines. Large MWC

¹ Order, *Sierra Club v. EPA*, No. 06–1250 (D.C. Cir. filed Feb. 15, 2008).

² <https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs>.

units that commence construction after the date of this proposal or commence a modification on or after the date 6 months after promulgation of the amended standards, would be “new” units subject to the more stringent NSPS emission limits.

- Clarify requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste or a mixture of these materials. The EPA is proposing to eliminate the regulatory title V permitting requirement for air

curtain incinerators that are not located at a major source or subject to title V for other reasons.

3. Costs and Benefits

Table 1 of this preamble summarizes the monetized benefits, costs, and emissions reductions of this proposed action for new and existing large MWCs from 2025 through 2044. As indicated in Table 1, the EPA projects that the proposed amendments would result in an estimated 14,000 tons per year

reduction in regulated pollutants. The EPA conducted an economic analysis for this proposal, as detailed in the document *Regulatory Impact Analysis for the Proposed Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors* (referred to as the RIA in this document). The RIA is available in the docket and is also briefly summarized in section IV of this preamble.

TABLE 1—MONETIZED BENEFITS, COSTS, NET BENEFITS, AND EMISSIONS REDUCTIONS OF THE PROPOSED NSPS AND EG AMENDMENTS, 2025–2044^a

[Dollar estimates in millions of 2022 dollars, discounted to 2023]

	3 Percent discount rate		7 Percent discount rate	
	Present value	Equivalent annualized value	Present value	Equivalent annualized value
Benefits ^b	\$5,100 and \$16,000	\$340 and \$1,100	\$3,100 and \$9,800	\$290 and \$920.
Compliance costs	\$1,700	\$110	\$1,200	\$120.
Net benefits	\$3,400 and \$14,000	\$230 and \$970	\$1,800 and \$8,500	\$170 and \$800.
Emissions reductions (short tons)	Total for period of analysis (years 2025–2044):			
Mercury	1,100 pounds.			
Dioxins/Furans	1000 grams.			
Hydrogen Chloride	6,900 short tons.			
Sulfur Dioxide	48,000 short tons.			
Nitrogen Oxides	230,000 short tons.			
Cadmium	0.89 short tons.			
Lead	3.6 short tons.			
PM	490 short tons.			
PM <2.5 microns (PM _{2.5})	280 short tons.			
Non-monetized benefits in this table	Health and environmental benefits from reducing 6,900 short tons of HAP from 2025 to 2044. Non-health benefits from reducing 490 short tons of PM, of which 280 short tons are PM _{2.5} , from 2025 to 2044. Visibility benefits. Reduced ecosystem/vegetation effects.			

^a Totals may not sum due to independent rounding. Numbers rounded to two significant digits unless otherwise noted.

^b Monetized benefits include health benefits associated with reductions in PM_{2.5} concentrations from reductions in directly emitted PM_{2.5} and precursors such as SO₂ and NO_x. The monetized health benefits are quantified using two alternative concentration-response relationships from Di et al. (2016) and Turner et al. (2017).

B. Does this action apply to me?

This proposal applies to large MWCs that combust more than 250 tpd of MSW as defined under section 129(a)(1)(B) of the 1990 CAA Amendments (*See* Pub. L. 101–549, title III, section 305(a), November 15, 1990, 104 Stat. 2577) and regulated under 40 CFR part 60, subparts Cb and Eb. The North American Industry Classification System (NAICS) codes for the large municipal waste industry are 562213 and 924110. This list of categories and NAICS codes is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Some large MWCs are owned and operated by local or municipal governments, and thus

would be affected by this proposed action.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/large-municipal-waste-combustors-lmwc-new-source-performance>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part

60, subparts Cb and Eb³ proposed in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2017–0183). Following signature by the EPA Administrator, the EPA also will post a copy of this document to <https://www.epa.gov/stationary-sources-air-pollution/large-municipal-waste-combustors-lmwc-new-source-performance>.

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by section 129 of the CAA. CAA section 129 requires the EPA to establish NSPS and EG pursuant to CAA

³ Note that the EPA is not proposing any amendments to 40 CFR part 60 subpart Ea at this time, but may reserve this subpart in a future action, as discussed later in this preamble.

sections 111 and 129 for new and existing solid waste incineration units, including “incineration units with capacity greater than 250 tpd combusting municipal waste.” This action amends the large MWC standards under such authority. In addition, CAA section 129(a)(5) specifically requires the EPA to review the standards at 5-year intervals and, if appropriate, revise the standards and the requirements for solid waste incineration units, including large MWC units.

In setting forth the methodology that the EPA must use to establish the first-stage technology-based standards, CAA section 129(a)(2) provides that standards “applicable to solid waste incineration units promulgated under . . . [section 111] and this section shall reflect the maximum degree of reduction in emissions of . . . [certain listed air pollutants] that the Administrator, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing units in each category.” This level of control is referred to as a maximum achievable control technology, or MACT standard. CAA section 129(a)(4) further directs the EPA to set numeric emission limits for certain enumerated pollutants (Cd, CO, PCDD/PCDF, HCl, Pb, Hg, NO_x, PM, and SO₂). In addition, the standards “shall be based on methods and technologies for removal or destruction of pollutants” according to CAA section 129(a)(3). The EPA has substantial discretion to distinguish among classes, types, and sizes of incinerator units within a category while setting standards.

In promulgating a MACT standard, the EPA must first calculate the minimum stringency levels for new and existing solid waste incineration units in a category, based on levels of emissions control achieved in practice by the subject units. The minimum level of stringency is called the MACT floor. Different approaches exist for determining the floors for new and/or existing sources. For new, modified, and reconstructed sources, CAA section 129(a)(2) provides that the “degree of reduction in emissions that is deemed achievable . . . shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator.” Emissions standards for existing units may be less stringent than standards for new units, but CAA section 129(a)(2) requires that the standards “shall not be less stringent than the average emissions limitation achieved by the best-performing 12

percent of units in the category.” The MACT floors form the least-stringent regulatory option the EPA may consider in the determination of MACT standards for a source category and therefore cost is not a factor for consideration. As a part of the “beyond-the-floor” evaluation, the EPA must evaluate standards more stringent than the floor, which includes the consideration of the factors outlined in CAA section 129(a)(2) including the costs, non-air quality health and environmental impacts, and energy requirements of more stringent controls. *See also Nat’l Ass’n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (explaining in related context under CAA section 112(d)(2), the EPA’s obligation to set more stringent “beyond-the-floor” standards if practicable).

MACT analyses involve assessing emissions from the best-performing units in a source category. The assessment can be based on actual emissions data, knowledge of existing air pollution control in combination with actual emissions data, or other information such as state regulatory requirements that enable the EPA to estimate the performance of the regulated units. For each source category, the assessment involves a review of actual emissions data with an appropriate accounting for emissions variability. Other methods of estimating emissions can be used, provided that the methods can be shown to provide reasonable estimates of the actual emissions performance of a source or sources. Where there is more than one method or technology to control emissions, the analysis may result in several potential regulations (regulatory options), one of which is selected as MACT for each pollutant. Each regulatory option must be at least as stringent as the minimum-stringency floor requirements. The EPA must also examine, but is not necessarily required to adopt, more stringent beyond-the-floor regulatory options to determine MACT. Unlike with floor minimum stringency requirements, the EPA must consider various impacts of the more stringent regulatory options in determining whether MACT standards are to reflect beyond-the-floor requirements. If the EPA concludes that the more stringent regulatory options have unreasonable impacts, the EPA selects the floor-based regulatory option as MACT. If the EPA concludes that impacts associated with beyond-the-floor levels of control are acceptable given the emissions reductions achieved, the EPA selects those levels as MACT.

Under CAA section 129(a)(2), for new sources, the EPA determines the best control currently in use for a given pollutant and establishes one potential regulatory option at the emission level achieved by that control, accounting for emissions variability. More stringent potential beyond-the-floor regulatory options might reflect controls used on other sources that could be applied to the source category in question. For existing sources, the EPA determines the average emissions limitation achieved by the best-performing 12 percent of units to form the floor regulatory option. Beyond-the-floor options reflect other controls capable of achieving better performance.

As noted earlier in this preamble, CAA section 129(a)(5) requires the EPA to conduct a review of the standards at 5-year intervals and, in accordance with CAA sections 129 and 111, if appropriate, revise the standards. In conducting the 5-year review, the EPA assesses the performance of and variability associated with control measures affecting emissions performance at sources in the subject source category (including the installed emissions control equipment), along with recent developments in practices, processes, and control technologies, and determines whether it is appropriate to revise the NSPS and EG. This approach is consistent with the requirement that standards under CAA section 129(a)(3) “shall be based on methods and technologies for removal or destruction of pollutants before, during or after combustion.” We do not interpret CAA section 129(a)(5), together with CAA section 111, as requiring the EPA to recalculate MACT floors in connection with this 5-year review.⁴ This general approach is similar to the approach taken by the EPA in periodically reviewing CAA section 111 standards, which, under CAA section 111(b)(1)(B), requires the EPA, except in specified circumstances, to review NSPS promulgated under that section every eight years and to revise the standards if the EPA determines that it is appropriate to do so.

⁴ Elsewhere in the CAA, including under CAA section 112(d)(6), the EPA is also obliged to undertake periodic reviews. Although the nature or scope of the periodic review under CAA section 112(d)(6) is different than under CAA section 129(a)(5), it may be worth noting that, even under CAA section 112(d)(6), the EPA is not obligated to recalculate MACT floors in the course of a periodic review. *NRDC v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008); *Nat’l Ass’n for Surface Finishing v. EPA*, 795 F.3d 1, 7–9 (D.C. Cir. 2015).

B. What is the regulatory background for this source category?

In December 1995, the EPA adopted EG (40 CFR part 60, subpart Cb) and NSPS (40 CFR part 60, subpart Eb)⁵ for large MWC units pursuant to CAA section 129. As stated earlier in section I.A.1 of this preamble, large MWC units have a combustion capacity greater than 250 tpd of MSW. Both the EG and NSPS require compliance with emission limitations that reflect the performance of MACT. The 1995 NSPS apply to new large MWC units which commenced construction, were modified, or were reconstructed after September 20, 1994. The 1995 EG apply to existing large MWC units which commenced construction on or before September 20, 1994. The 1995 EG required that emission control retrofits be completed by December 2000. Retrofits of controls at existing large MWC units were completed on time (by December 2000) and were highly effective in reducing emissions of most CAA section 129 pollutants. Relative to a 1990 baseline, the EG reduced organic emissions (PCDD/PCDF) by more than 99 percent, metal emissions (Cd, Pb, and Hg) by more than 93 percent, and acid gas emissions (HCl and SO₂) by more than 91 percent. While NO_x is also regulated under the 1995 EG and NSPS, the emissions reductions for NO_x were relatively modest compared to the other CAA section 129 pollutants.

The CAA requires review of these standards at 5-year intervals and, in 2006, amendments to the 1995 standards were promulgated. In the 2006 final rule, titled “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors” (71 FR 27324, May 10, 2006), revisions to the emission limits and compliance testing provisions were made to reflect the actual performance achieved by existing MWCs and to reflect improvements in CEMS data performance and reliability.

Following promulgation of the 2006 rulemaking, environmental groups filed a petition for review in the D.C. Circuit challenging the rulemaking. The petitioners challenged the MACT floor limits which the EPA promulgated in 1995. In light of then-recent precedents casting doubt on the soundness of MACT floors derived in part from state-

issued air permits,⁶ as the 1995 MACT floors for large MWCs were, the EPA sought a voluntary remand of the 2006 rule. In its remand motion, the EPA announced its intention to grant the environmental groups’ administrative petition to revisit the 1995 MACT floors and reevaluate the 2006 rule as necessary to comport with any revisions. The D.C. Circuit issued an order granting the EPA’s request for a remand in 2008, which directed EPA to review its 2006 rulemaking. Order, *Sierra Club v. EPA*, No. 06–1250 (D.C. Cir. filed Feb. 15, 2008).

C. What data collection activities were conducted to support this action?

The majority of the data for addressing the MACT remand come from source inventory information from the original 1995 rulemaking docket and compliance test information compiled primarily from 2000 to 2009. This data set builds upon initial compliance data and inventory information collected in 2000. Starting with initial 2000 compliance data,⁷ Microsoft Excel spreadsheet template files were created to compile compliance data for the following years. These spreadsheet templates, or load sheets, were distributed to EPA regional contacts for the regions where a large MWC was being operated. The load sheets were distributed in early 2008, with most of the responses being completed and

returned at some point during the year. Usually, EPA regional office contacts or state personnel completed the load sheets, but occasionally corporate contacts would provide the information. Sometimes, copies of compliance test reports and annual reports were submitted instead of load sheets. In these cases, data were extracted from the test report and entered into a load sheet for the unit or directly entered into the large MWC database records. The database of emissions data is available in the docket for this action.

D. What other relevant background information and data are available?

In addition to the compliance data compiled in 2009, data gaps for newer large MWC facilities were filled by downloading publicly available permit applications, permits, and test reports from State environmental data website portals to establish baseline emission estimates and air pollution controls currently in place for each unit. The EPA also conducted a site visit to the most recently constructed large MWC facility in the United States, where the only domestic MWC units with selective catalytic reduction (SCR) technology to control NO_x emissions are operated. The site visit report and memorandum documenting the review and supporting information are available in the docket for this action.

Finally, information and analyses from a separate rulemaking, the Good Neighbor Plan,⁸ were instrumental in the review of the large MWC NSPS and EG. Specifically, the 5-year review used information on performance, technical feasibility, and cost considerations for advanced selective noncatalytic reduction (ASNCR) and low NO_x (LNTM) controls that can be retrofitted onto existing MWC units, as well as information on SCR controls for new units.

E. How does the EPA perform the 5-year review?

In conducting 5-year reviews under CAA section 129(a)(5), the EPA assesses the performance of, and variability associated with, control measures affecting emissions performance at sources in the subject source category (including the installed emissions control equipment), along with developments in practices, processes, and control technologies. For development of this proposed rule, the EPA reviewed available performance data for large MWC units. In reviewing the standards based on currently available emissions information, we

⁶ Specifically, the petitioners pointed to a 2004 decision from the D.C. Circuit, which remanded MACT floors established for existing small MWCs derived from state-issued permit limits because the Court found the EPA did not fulfill the requirement of CAA section 129(a)(2) in setting the floors. See *Northeast Maryland Waste Disposal Authority v. EPA*, 358 F.3d 936 (D.C. Cir. 2004). Additionally, the EPA noted in its motion for a voluntary remand that since the time the EPA finalized the 2006 rulemaking, the D.C. Circuit issued three decisions that were relevant to rules promulgated under sections 112 and 129 of the CAA, since the floor setting requirements in section 129 are essentially equivalent to those under section 112. See *Sierra Club v. EPA*, 479 F.3d 875 (D.C. Cir. Mar. 13, 2007) (vacating the EPA’s regulations setting national emission standards for brick and clay ceramics kilns under Section 112); *Natural Resources Defense Council v. EPA*, 489 F.3d 1250 (D.C. Cir. June 8, 2007) (vacating the EPA’s regulations setting national emission standards under section 112 for hazardous air pollutants from industrial, commercial, and institutional boilers and process heaters and the EPA’s regulations under section 129 defining the term “commercial and industrial solid waste incineration unit”); *Natural Resources Defense Council v. EPA*, 489 F.3d 1364 (D.C. Cir. June 19, 2007) (vacating portions of an EPA rule promulgated under CAA section 112 regulating hazardous air pollutants from the manufacture of plywood and composite wood products).

⁷ Bradley Nelson and Can Kuterdam, Alpha-Gamma Technologies, Inc., to Walt Stevenson, U.S. EPA. “Performance/Test Data for Large Municipal Waste Combustors (MWCs) at MACT Compliance (Year 2000 Data).” June 18, 2002. EPA Air Legacy Docket A–90–45, Item VIII–B–4.

⁵ Note that on February 11, 1991, Subpart Ea was promulgated that applies Standards of Performance to MWCs which commenced construction after December 20, 1989, and on or before September 20, 1994.

⁸ See 88 FR 36654 (June 5, 2023).

addressed the CAA section 129(a)(5) review's goals of assessing the performance efficiency of the installed equipment and ensuring that the emission limits reflect the performance of the technologies that sources are using to comply with MACT standards. In addition, we considered whether new technologies, processes, and improvements in practices have been demonstrated at sources subject to the 2006 large MWC rule. Our review evaluates implementation of the existing standards, which includes analysis of compliance data and identification of control and/or monitoring technologies trends that have occurred since the MACT standards were promulgated and previous 5-year reviews were conducted. Where we identify potential trends or developments that "indicate that emission limitations and percent reductions beyond those required by the standards . . . are achieved in practice,"⁹ we analyzed their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with each development. This analysis informs our decision on whether to revise the emissions standards to reflect emission limitations "achieved in practice." In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. We consider any of the following to be a potential development:

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards or previous 5-year reviews.
- Any improvements in add-on control technology or other equipment that were considered during development of the original MACT standards or previous 5-year reviews and could result in additional emissions reduction.
- Any significant changes in the cost (including cost-effectiveness) of

applying controls (including controls the EPA considered during the development of the original MACT standards or during previous 5-year reviews).

F. What outreach and engagement did the EPA conduct?

There has been significant public interest in large MWC facilities due to concerns regarding impacts of emissions from these sources. In developing this proposed rule, the EPA conducted pre-proposal outreach activities with communities with environmental justice (EJ) concerns, as well as states and tribes. On December 6, 2022, a pre-proposal roundtable was conducted with communities to present background information on the industry and plans for the rulemaking, and to address questions. The EPA emailed information to roundtable stakeholders explaining how to comment on the non-regulatory docket established to solicit public input on the Agency's efforts to review and revise the large MWC emission standards. This information was sent to tribal nations, small businesses, and communities with EJ concerns via existing listservs on March 13, 2023.¹⁰ The EPA also conducted a public roundtable on March 20, 2023 for members of communities with EJ concerns and their representatives. Additionally, the EPA held a consultation meeting with the Intergovernmental Association and other Unfunded Mandate Reform Act (UMRA) stakeholders on March 16, 2023, to discuss the impact this rulemaking will have on operators of large MWCs, including units that are owned and operated by state and local entities.

III. Analytical Results and Proposed Decisions

A. What are the results and proposed decisions based on our 5-year review and response to the voluntary MACT floor remand, and what is the rationale for those decisions?

1. Proposed Limits

In this action, the EPA is reevaluating the initial MACT standards established

in 1995 for large MWCs pursuant to our 2008 request to the D.C. Circuit for a voluntary remand and conducting the 5-year review of large MWC under CAA section 129(a)(5). As part of this process, we considered four scenarios for setting new EG and NSPS emission limits based on the EPA's obligations to reevaluate MACT standards established in 1995 and to conduct the 5-year review under CAA section 129(a)(5). As part of EPA's MACT floors reevaluation, the Agency first must consider best performing units to establish MACT floors limits, and then further consider whether additional beyond-the-floor controls are appropriate. As part of the 5-year review, the EPA must further consider whether additional controls are appropriate given improvements in pollution controls. Accordingly, the EPA undertook the following analyses to identify potential regulatory approaches: (1) determined the MACT floor limits for all pollutants, (2) determined the beyond-the-floor based limits for all pollutants, (3) considered a combination of both MACT floor limits and 5-year review limits depending on the pollutant, and (4) further considered a combination of beyond-the-floor and 5-year review limits depending on the pollutant. Methodologies and rationale used to determine these limits are discussed in further detail in sections III.A.2 and 3 below. For reasons discussed later in this section of the preamble, the EPA is proposing the third scenario, which includes MACT floor limits for all pollutants except for NO_x. The proposed limits for NO_x reflect the results of the 5-year review. Tables 2 and 3 of this preamble present the proposed EG and NSPS emission limits for large MWCs, respectively. Current emission limits (from the 2006 rule) for existing and new units are provided for comparison. NO_x and CO limits were assessed by subcategories determined by combustor type, including mass burn waterwall (MB/WW), mass burn rotary combustor (MB/RC), refuse-derived fuel stoker (RDF/S), RDF spreader stoker fixed floor/100 percent coal capable and RDF semi-suspension/wet RDF process conversion (RDF/SS), and RDF/fluidized bed combustion (RDF/FBC).

⁹ CAA section 129(a)(5) relies on CAA section 111 for requirements for 5-year review: ". . . the Administrator shall review, and in accordance with this section and section 7411 of this title, revise such standards and requirements." CAA section 111(b)(1)(B) states the following: "When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice."

¹⁰ Information submitted to the pre-proposal non-regulatory docket at Docket ID No. EPA-HQ-OAR-2022-0920 is not automatically part of the proposal record. For information and materials to be considered in the proposed rulemaking record, it must be resubmitted in the rulemaking docket at EPA Docket ID No. EPA-HQ-OAR-2017-0183.

TABLE 2—COMPARISON OF EXISTING SOURCE LIMITS FOR 2006 LARGE MWC RULE AND THE PROPOSED EMISSION LIMITS FOR EXISTING SOURCES

Pollutant	Units of measure	2006 EG (current) limits	Proposed subcategory EG limits				
			MB/WW	MB/RC	RDF/S	RDF/SS	RDF/FBC
Cd	ug/dscm @7 percent O ₂	35			1.5		
Pb	ug/dscm @7 percent O ₂	400			56		
PM	mg/dscm @7 percent O ₂	25			7.4		
Hg	ug/dscm @7 percent O ₂	50			12		
PCDD/PCDF	ng/dscm @7 percent O ₂	^b 30/35			7.2		
HCl	ppmdv @7 percent O ₂	29			13		
SO ₂	ppmdv @7 percent O ₂	29			20		
NO _x ^a	ppmdv @7 percent O ₂	^c 180–250			110		
CO	ppmdv @7 percent O ₂	^d 50–250	^e 100	110	110	^e 250	110

^a NO_x limit based on the 110 ppm (24-hour) NO_x limit being finalized under National Ambient Air Quality Standards (NAAQS). Units equipped with SCR devices will be subject to their currently permitted limit of 50 ppm.

^b 30 ng/dscm for fabric filter equipped MWC units and 35 ng/dscm for electrostatic precipitator-equipped MWC units.

^c Range in limits based on combustor type. MB/WW (205); RDF (250); MB/RC (210); RDF/FBC (180).

^d Range in limits based on combustor type. MB/WW (100); MB/RC (250); RDF/S (200); RDF/SS (250); RDF/FBC (200); modular starved air or modular excess air (50).

^e Reevaluated MACT floor limit was less stringent than current limit, so is not proposed to change.

TABLE 3—COMPARISON OF NEW SOURCE LIMITS FOR 2006 LARGE MWC RULE AND THE PROPOSED EMISSION LIMITS FOR NEW SOURCES

Pollutant	Units of measure	2006 NSPS (current) limits	Proposed subcategory NSPS limits		
			MB/WW	MB/RC	RDF/S
Cd	ug/dscm @7 percent O ₂	10		1.1	
Pb	ug/dscm @7 percent O ₂	140		13	
PM	mg/dscm @7 percent O ₂	20		4.9	
Hg	ug/dscm @7 percent O ₂	50		6.1	
PCDD/PCDF	ng/dscm @7 percent O ₂	13		1.8	
HCl	ppmdv @7 percent O ₂	25		7.8	
SO ₂	ppmdv @7 percent O ₂	30		14	
NO _x ^a	ppmdv @7 percent O ₂	150		50	
CO	ppmdv @7 percent O ₂	^b 50–150	16		100

^a NO_x limit based on 50 ppm (24 hour) permitted limit for units currently equipped with SCR control devices.

^b Range in limits based on combustor type. MB/WW (100); RDF/S (150); Modular starved air or modular excess air (50).

2. MACT Floor Assessment

To correct our initial analysis of MACT floors undertaken in 1995, the EPA proposes to recalculate the large MWC MACT floors to account for the development of caselaw calling into question the establishment of these standards based on state-issued permit levels where there is no evidence that the permit levels reflect the performance of the best performing sources. As discussed above, following a series of D.C. Circuit cases which called into question the use of state permitting data for establishing MACT floors,¹¹ the EPA sought and was granted a voluntary remand of the 2006 revisions to the large MWC regulations in response to a petition for reconsideration from environmental groups to re-evaluate the 1995 MACT floors, which were also based on emission limits established in state-issued permits (60 FR 65387, December 19, 1995). In its motion for a

voluntary remand, the EPA explained that it intended to “re-analyze the floors in the 1995 rule,”¹² and “revisit the data and information used in the 1995 rule, as well as obtain additional data, to determine whether the 1995 floors need to be revised.”¹³ However, in reviewing the data and information the EPA utilized in calculating the 1995 MACT floors, the EPA determined that it does not have sufficient data from that time period to characterize the performance of all units that is necessary to evaluate MACT floors.

We are accordingly proposing to base our calculation of the MACT floors on additional emissions data from sources in the large MWC source category. In recalculating the MACT floors to correct for errors in our initial analysis, however, EPA is assessing the state of the industry at the time limits were first

calculated for large MWCs in 1995. Given the specifics of the history of the regulation of this source category, the EPA views this as an appropriate approach to establish MACT floors that reflect the emission levels actually achieved by the best-performing sources using the maximum achievable control technology before sources in the category first complied with the 1995 standards. The EPA proposes utilizing 1995 performance levels to re-establish MACT floor requirements appropriately balances competing interest in this rulemaking, by recognizing on one hand that LMWC facilities have taken steps to reduce emissions since the EPA first promulgated 1995 standards, and on the other hand the EPA’s obligation to ensure MACT floor standards are set correctly for each source category regulated under CAA section 129. To do this, however, the EPA finds it is necessary to utilize a different dataset to recalculate new MACT floors than the

¹¹ See note 6, *supra*.

¹² EPA Motion for Voluntary Remand at 8, *Sierra Club v. EPA*, no. 06–1250 (D.C. Cir. filed Nov. 9, 2007).

¹³ *Id.* at 10.

one used to set the initial MACT floors in 1995.

In a related context, for hospital, medical, and infectious waste incinerators (HMIWI) regulated under CAA section 129, the EPA addressed a remand from the D.C. Circuit to provide further explanation of the EPA's reasoning in determining MACT floors for new and existing HMIWI. See 74 FR 51368 (October 6, 2009). In that case, after the original MACT floors went into effect for HMIWI, approximately 94% of HMIWI units shutdown, and an additional 3% of units obtained exemptions from the EPA's regulations. 72 FR 5510, 5518 (proposed February 6, 2007). Because of these significant changes in the regulated industry, in addressing the D.C. Circuit's remand, the EPA found it was not confident in using much of the same data relied upon in setting the original MACT floors in part because data were unavailable from the many units that shut down following promulgation of the original standards. The EPA instead found "the best course of action [was] to re-propose a response to the remand based on data from the 57 currently operating HMIWI." 73 FR 72962, 72970 (proposed December 1, 2008). In reviewing the EPA's decision in how it recalculated MACT floors for HMIWI, the D.C. Circuit found, "[w]hen the EPA determined that its regulation rested on unreliable data and that it had to reset the floors, the agency was functionally regulating on a blank slate even though the regulation continued to remain on the books." *Medical Waste Institute and Energy Recovery Council v. E.P.A.*, 645 F.3d 420 (D.C. Cir. 2011).

Similar to the D.C. Circuit's finding in *Medical Waste Institute*, the EPA proposes here it is functionally establishing new MACT floors for large MWCs on a blank slate. However, unlike the HMIWI rulemaking, the EPA has not seen significant retirements in the large MWC industry since the EPA first introduced standards pursuant to CAA section 129 in 1995, and the industry today is comprised of largely the same set of units that were operating before

the original MACT floors went into effect. Instead of retirements, the majority of the industry undertook the installation of air pollution control devices and made other improvements to meet the 1995 standards. Therefore, the EPA proposes for recalculating MACT floors for LMWCs, because the industry today is comprised of largely the same set of units that were operating in 1995, that the EPA is able to calculate revised MACT floors appropriate for the current LMWC population based on the industry's 1995 performance level.

In calculating MACT floors, for existing sources, the CAA requires that MACT limits be no less stringent than the average emissions limitation achieved by the best-performing 12 percent of units in a source category. The EPA must determine some measure of the average emissions limitation achieved by the best-performing 12 percent of units to form the floor regulatory option. For new sources, the CAA requires that MACT limits be no less stringent than the emissions control achieved in practice by the best-controlled similar unit.

Our first step in calculating the MACT floor limits based on the EPA's proposed rationale was to identify the population of units operating at the time of the original emission guidelines development (1990), then use corresponding compliance data reported from 2000 through 2009¹⁴ to rank units by performance for each pollutant. Compliance data were adjusted to account for supplemental control from air pollution control device (APCD) configurations that were not in place prior to 1995. These control adjustments were made by assigning default control efficiencies to each APCD configuration for each pollutant, back calculating an "uncontrolled" emissions value from the post-retrofit data, then applying the control efficiencies corresponding to pre-retrofit configurations to estimate

¹⁴ The Large MWC 2009 Database is located in the docket for this rulemaking in Microsoft Access database format. The memorandum documenting the database contents and creation is also available in the docket.

emissions that would more accurately represent the performance level of units operating in 1990.

Adjusted data were ranked, and top performing units were identified for each pollutant and any applicable subcategories. Then, corresponding emissions data were compiled and analyzed to determine the average performance of those units, with an appropriate accounting for emissions variability, to establish MACT floor emission limits. Separate methodologies were used for pollutants having stack test data (Cd, Pb, Hg, PM, HCl, and PCDD/PCDF) and pollutants having CEMS data (CO, NO_x, and SO₂).

For each stack test pollutant, a statistical analysis was performed on annual averages of screened run data from the 2000 to 2009 dataset to determine an upper prediction limit (UPL). For EG limits, average annual run data corresponding to the top 12 percent of units were used, and for NSPS limits, average annual run data for the single top performer was used.¹⁵ The UPL is appropriate when data are not available for every source in a population of interest and a "prediction" element is warranted in the final floor value. This is the case for the 1990 population of large MWCs because several units shut down before compliance data were collected. The EPA's most recent UPL template, released in January 2022, was used to conduct the analysis. UPL results were rounded up to two significant figures.

UPL results and the derived EG and NSPS MACT floor limits are presented in Table 4 of this preamble. Additional discussion of the methodology, detailed results, and a copy of the UPL template can be found in the docket.¹⁶

¹⁵ For PCDD/PCDF, the top performing unit only had enough reported data to derive two annual averages. In this case, because the UPL template can only accommodate data sets of $n \geq 3$, unit run data were used instead.

¹⁶ See memorandum "MACT Floor Calculations for Large Municipal Waste Combustor Units" available at Docket ID. No. EPA-HQ-OAR-2017-0183.

TABLE 4—LARGE MWC MACT FLOOR EG AND NSPS LIMITS FOR STACK TEST POLLUTANTS

Pollutant	Units (@ 7 percent O ₂)	EG MACT floor calculations		NSPS MACT floor calculations	
		UPL result	MACT floor limit	UPL result	MACT floor limit
Cd	ug/dscm	1.44	1.5	0.492	^a 1.1
Pb	ug/dscm	55.65	56	12.19	13
PM	mg/dscm	7.36	7.4	4.81	4.9
Hg	ug/dscm	11.997	12	6.07	6.1
PCDD/PCDF	ng/dscm	7.18	7.2	1.73	^b 1.8
HCl	ppmdv	12.92	13	7.799	7.8

^a Calculated results were less than the representative detection level (RDL), so the MACT floor limit has been set at Cd's 3 times RDL value of 1.1 ug/dscm.

^b The top performer for PCDD/PCDF only had two years of data. The UPL requires at least three data points, so instead of annual averages, individual test runs were used in this case.

Unlike stack test pollutants, there are no individual run data for CEMS pollutants. Instead, data for CO, NO_x, and SO₂ are collected continuously, and available data comprise only peak annual values for which the current rule requires reporting. Although upper limit statistical approaches were initially considered for establishing MACT floor limits, it was ultimately determined that the data already account for emissions variability, since the annual peak 24-hour or 4-hour average has been selected from the year's CEMS data and represents only the highest end of readings for the year. Therefore, no statistical calculations to account for variability are warranted for the CEMS

pollutant data sets. The limits were reevaluated simply by averaging annual peak CEMS data corresponding to the top performers for each pollutant and applicable subcategory. For NO_x and CO, separate NSPS limits were calculated for only two subcategories, MB/WW and RDF. They were not broken down further, as was done for EG limits, because the MB/RC, RDF/SS, and RDF/FBC subcategories represent single, unique facilities with unit designs that likely will not be used in any future large MWC units. For NSPS purposes, we assumed the overarching MB or RDF subcategories will represent

performance of any units built in the future.

As with the UPL results for stack test pollutants, resulting averages for CEMS pollutants were rounded up to two significant figures. In cases where results were greater (less stringent) than the current large MWC EG limit, the current limit was retained as the MACT floor limit.

Averages and subsequent MACT floor EG and NSPS limits are summarized in Tables 5 and 6 of this preamble, respectively. Additional discussion of the methodology, detailed results, and a copy of the UPL template can be found in the docket.¹⁷

TABLE 5—LARGE MWC MACT FLOOR EG LIMITS FOR CEMS POLLUTANTS

Pollutant	Units (@ 7 percent O ₂)	EG MACT floor calculations									
		Average of annual peak CEMS data					MACT floor limit				
		MB/WW	MB/RC	RDF	RDF/SS	RDF/FBC	MB/WW	MB/RC	RDF	RDF/SS	RDF/FBC
SO ₂	ppmdv	19.33					20				
NO _x	ppmdv	226.52	142.25	157.29		290.83	^a 205	150	160		^a 180
CO	ppmdv	168.52	109.92	102.14	818.90	101.40	^a 100	110	110	^a 250	110

^a Calculated limit was less stringent than current limit so kept at current limit.

TABLE 6—LARGE MWC MACT FLOOR NSPS LIMITS FOR CEMS POLLUTANTS

Pollutant	Units (@ 7 percent O ₂)	NSPS MACT floor calculations			
		Average of annual peak CEMS data		MACT floor limit	
		MB	RDF	MB	RDF
SO ₂	Ppmdv	13.96		14	
NO _x	Ppmdv	130.50	154.46	140	^a 150
CO	Ppmdv	15.65	99.03	16	100

^a Calculated limit was less stringent than current limit so kept at current limit.

3. Beyond-the-Floor and 5-Year Review Results and Selection of Proposed Emission Limits

For assessing beyond-the-floor options at the time of the original

rulemaking (*i.e.*, as companion to addressing the remand of the original rule's MACT floors), the EPA recognizes that the majority of large MWC units have since been equipped with air

pollution control devices that would represent state-of-the-art technology in the 1990s, such as spray dryer absorbers (SD) for HCl and SO₂; fabric filters for PM, Cd, and Pb; activated carbon

¹⁷ See memorandum "MACT Floor Calculations for Large Municipal Waste Combustor Units"

available at Docket ID. No. EPA-HQ-OAR-2017-0183.

injection (ACI) for Hg and PCDD/PCDF; and selective noncatalytic reduction (SNCR) for NO_x emissions control. Therefore, to represent beyond-the-floor emission limits for existing sources numerically, we have assumed that the new source MACT floor (*i.e.*, emissions control achieved in practice by the best controlled similar unit) as the emission limit applied to existing sources would represent the beyond-the-floor option in the reevaluation of the 1995 standards.

To assess additional control options currently in use in completion of the 5-year review pursuant to CAA section 129(a)(5), the EPA assessed the performance of, and variability associated with, control measures affecting emissions performance at large MWC sources (including the installed emissions control equipment), and recent developments in practices, processes, and control technologies. As evidenced by the recently finalized Good Neighbor Plan rulemaking,¹⁸ there are cost-effective advanced NO_x control technologies available for retrofit to existing large MWC units, namely ASNCR and Covanta's LNTM Technology. Furthermore, for new sources, SCR has been installed on the most recently constructed large MWC facility (comprising three units) in the United States, so the permitted emission limit for this SCR-equipped facility represents the 5-year review-based standard for new sources. Neither of these control options were being applied to large MWC units in the 1990s, and development and commercial application of LN technology and ASNCR did not occur until the 2000s. To reflect that these technologies are now available and economically and technically viable, the EPA determined that the beyond-the-floor option for NO_x did not reflect the current state of the control technologies. Instead, the third and fourth scenarios consider the NO_x control technologies as 5-year review options for consideration and combine this with either MACT floor or beyond-the-floor controls for the other pollutants. In other words, the third scenario consists of MACT floor emission limits for all

pollutants except NO_x, which is being proposed as a 5-year review emission limit. The fourth scenario consists of beyond-the-floor emission limits for all pollutants except NO_x, which is proposed as a five-year review emission limit. As discussed further at the end of this section, as part of the five-year review, the EPA also reviewed and is taking comment on whether more recent improvements present additional control options for other pollutants.

The estimated cost impacts and emissions reductions of the MACT floor, beyond-the-floor,¹⁹ MACT floor/5-year review, and beyond-the-floor/5-year review are presented in sections IV.D. and IV.B of this preamble, respectively. Based on our analyses and the findings of the Good Neighbor Plan, selecting the MACT floor/5-year review scenario provides the most cost-effective means to maximize emission reductions. As presented in section IV.B of this preamble, the MACT floor, the MACT floor/5-year review scenario, and beyond-the-floor/5-year review scenarios are expected to result in 5,020, 14,200 and 16,800 tons per year of emissions reductions of regulated pollutants, respectively. Therefore, it is evident that the emissions reductions for the 5-year review scenarios are significantly greater than the MACT floor (approximately 11,000 tons per year more), while the beyond-the-floor scenario only adds 2,600 tons per year in incremental emissions reduction above the MACT floor/5-year review scenario. As discussed earlier, cost is not a consideration for the MACT floor level of control, but consideration of the costs, including incremental cost-effectiveness, of the 5-year review and beyond-the-floor scenarios is allowed. In section IV.D of this preamble the cost impacts of each scenario assessments are presented. In reviewing the cost results, the MACT floor/5-year review scenario is just under \$100 million per year in total annual costs (including annualized capital costs and operating and maintenance costs), while the beyond-the-floor/5-year review scenario is estimated to cost \$582 million per year. From a cost-effectiveness viewpoint, the MACT floor/5-year review scenario comes in at approximately \$7,000 per ton emissions reduction, while the beyond-the-floor/5-year review scenario, being over five times more costly with less incremental emissions reductions, results in a cost-

effectiveness estimates at approximately \$35,000 per ton emissions reduction of regulated pollutants. Considering this, as mentioned above, the MACT floor/5-year review scenario provides the most cost-effective means to maximize emissions reductions and this scenario is being proposed.

Selection of the MACT floor/5-year review scenario further recognizes that most sources have already been retrofitted with APCD that were considered to be state of the art for MWCs in the 1990s (*i.e.*, spray dryers, fabric filters, activated carbon injection, and selective noncatalytic reduction). That is, other than NO_x, most large MWC units have control devices in place to meet at least some of the standards, with options for incremental improvements being readily available through increased sorbent use, for example. The NO_x control retrofits that are currently available (but were not in the 1990s) for most existing large MWCs appear to be cost effective (approximately \$5,000 to \$6,000 per ton). Except for very limited examples, these technologies appear to be, and in fact recently have been, technically feasible for several existing large MWC units currently operating in the U.S.

As a result of the 5-year review, the EPA is proposing the 110 parts per million (ppm) (24-hour) NO_x limit finalized under the Good Neighbor Plan, based on the application of ASNCR or Covanta LNTM NO_x technology. For this proposed action, the EPA has evaluated this limit for the full population of large MWCs, and the EPA finds that this limit is cost-effective for units outside of the Ozone Transport Region that are not covered by the Good Neighbor Plan.²⁰

Unlike the Good Neighbor Plan, the EPA is not proposing a mechanism for existing large MWCs to request a case-by-case emission limit based on a demonstration that application of ASNCR and Covanta's LNTM Technology or any other NO_x emission reduction technologies or measures is not technically feasible. This is because the EPA does not have the same ability to establish less stringent case-by-case emission limits under CAA section 129 standards, as it does under the "good neighbor provision" of CAA section 110(a)(2)(D)(i)(I). We request comment on whether there are unique circumstances (*e.g.*, combustor design/type) that render the proposed NO_x emission limit technically infeasible and whether subcategorized emission

¹⁸ See 88 FR 36654 (June 5, 2023). The Good Neighbor Plan established a combination approach to secure reductions of ozone-forming emissions of NO_x from power plants and industrial facilities in nine large industries. This included NO_x emissions limits and compliance assurance requirements for large MWC units operating within the Ozone Transport Region, which applies to 28 MWC facilities with a total of 80 units, across 20 states. In promulgating these requirements, the EPA found costs effectiveness values to install applicable control technologies were in line with control technology costs for other large industry sectors covered by the rule.

¹⁹ As noted, the 5-year review scenario for NO_x was notably cost-effective and technically feasible compared to the beyond-the-floor for NO_x, so beyond-the-floor for all pollutants (scenario 2) was not evaluated for cost or air impacts.

²⁰ In the Good Neighbor Plan, the EPA separately found this limit is cost-effective for units inside of the Ozone Transport Region. 88 FR 36654 (June 5, 2023).

limits may be appropriate in certain instances.

For new units, the EPA is proposing a NO_x NSPS limit of 50 ppm (24-hour), based on the permitted NO_x limit for the only facility currently using SCR technology with an air-to-air heat exchanger providing flue gas reheat prior to entering the SCR reactor. This design can only be reasonably applied during construction of the unit, so retrofitting SCRs to other existing units would be technically infeasible and/or very costly if a supplemental burner is required to provide reheat. We are proposing to apply this limit to all new units.

Aside from NO_x, the only other potential improvements considered technically feasible for large MWCs as part of the 5-year review are circulating fluidized bed scrubbers (CFBS) for acid gas control and oxidation catalysts for CO control. Neither of these technologies appear to be in use on any large MWC units, but they have been included in construction permits for some large MWC unit projects that were never constructed. Like SCR, CO oxidation catalysts would be prohibitively costly to retrofit to existing large MWC units, as they would require new facility footprint space and flue gas routing to accommodate an entirely new piece of equipment in the air pollution control device system. However, new sources may consider their application to meet the proposed CO limit. For CFBS, theoretically existing acid gas control devices could be replaced with a CFBS in the same footprint (similar to electrostatic precipitator replacement with fabric filter devices for particulate control) to achieve slightly better acid gas control than spray dryer absorbers. There is no available cost algorithm specific to CFBS, but available information comparing technical and performance parameters of CFBS and spray dryer absorbers (SDAs) indicates that SDA costs might serve as a reasonable proxy for CFBS costs. Based on expected costs for spray dryer replacement (since direct CFBS cost data are unavailable), the EPA has estimated the emissions and cost impacts of setting the limits to a level that would most likely require most existing sources to retrofit with CFBS, and has determined that the marginal improvement in emissions performance compared to increased sorbent injection rates using existing controls is not cost effective (approximately \$73,000 per ton versus approximately \$4,600 per ton). Further explanation is provided in the

large MWC cost memorandum.²¹ Since we have no data demonstrating the technical feasibility on new or existing MWC units, we are not proposing standards based on any potential performance improvements of these technologies and are instead using the MACT floor calculations to establish EG and NSPS limits for existing and new units. We request comment on whether there are any large MWC units equipped with these technologies (*i.e.*, CFBS and oxidation catalysts) and the performance and cost information of these controls.

B. What other actions are we proposing, and what is the rationale for those actions?

1. Changes to the Applicability Date of the 1995 Large MWC EG and NSPS

In this proposal, large MWC units would be treated differently under the amended standards as proposed than they were under the 1995 large MWC rule in terms of whether they are “existing” or “new” sources. Consistent with CAA section 129, new dates would define which units are considered new sources. Large MWC units that are currently subject to the NSPS would become existing sources under the proposed amended standards and would be required to meet the revised EG standards by the applicable compliance date for the revised guidelines. However, those units would continue to be NSPS units subject to the 1995 large MWC rule until they become subject to the amended existing source standards. Large MWC units that commence construction after the date of this proposal, or for which a modification is commenced on or after the date 6 months after promulgation of the amended standards, would be new units subject to the NSPS emission limits. Units for which construction or modification is commenced prior to those dates would be existing units subject to the proposed EG. That is, under these proposed amendments, any large MWC units that commenced construction on or before January 23, 2024, or that are reconstructed or modified prior to the date 6 months after promulgation of any revised final standards, would be subject to the 1995 large MWC NSPS/1991 NSPS (Ea, as appropriate) until the applicable compliance date for the revised EG, at which time those units would become existing sources. Similarly, large MWC units subject to the EG under the 1995 large MWC rule would need to meet the

revised EG by the applicable compliance date for the revised guidelines. Large MWC units that commence construction after January 23, 2024 or that are reconstructed or modified 6 months or more after the date of promulgation of any revised standards would have to meet the revised NSPS emission limits being added to 40 CFR part 60, subpart Eb within 6 months after the promulgation date of the amendments or upon startup, whichever is later.

Due to the timing of the original promulgation of NSPS for this source category and the 1990 CAA Amendments, there is a second NSPS applicable to large MWCs for which some standards are still referenced in title V operating permits. Subpart Ea standards apply to units for which construction commenced after December 20, 1989, and on or before September 20, 1994. Due to the proposed resetting of the “new” and “existing” definitions described above, any units that meet subpart Ea applicability would become existing units subject to 40 CFR part 60, subpart Cb once implemented through a state or Federal plan. As such, subpart Ea would no longer be necessary. We propose to “reserve” 40 CFR part 60, subpart Ea NSPS standards once the revised EG emission limits are implemented (*i.e.*, remove the current text of subpart Ea once it is no longer in use and maintain subpart Ea as a placeholder) and request comment on whether this future action would help or hinder implementation of the standards and any potential unintended consequences this could cause.

2. Proposed Removal of Alternative Percent Reduction Standards for Hg, HCl, and SO₂ and Emissions Averaging Allowance for NO_x

In addition to the proposed emission limits discussed in section III.A of this preamble, we also propose to remove all alternative percent reduction standards that were allowed in the original rulemaking. Specifically, we are proposing to remove the 85 percent reduction allowed for Hg (NSPS and EG), the 95 percent allowed for HCl (NSPS and EG), and the 80 percent (NSPS) and 75 percent (EG) allowed for SO₂. The percent reduction standards were introduced in 1989 when MWCs were regulated under section 111 of the CAA. They were established in addition to numeric emission limits and offered as an alternative means of compliance. The rationale for removal of these alternative standards is twofold. First, the proposed reevaluation of the standards relies solely on the vast

²¹ “Compliance Cost Analyses for Proposed Large MWC Rule Amendments” available at Docket ID. No. EPA-HQ-OAR-2017-0183.

amount of pollutant concentration data reported and compiled in the emissions database. There are not as much data available to evaluate for the alternative percent reduction standards, which increases the risk of mischaracterizing the emissions limitations achieved by the best-performing sources when using that data. Retaining the existing percent reduction alternatives could introduce a disconnect between the numeric reevaluated limits and the alternative percent reduction standards. Second, having a numeric concentration limit for these pollutants provides a level playing field for the environmental protection and health of the surrounding communities by preventing situations where a different concentration of pollutants is emitted from facility to facility or unit to unit. Most owners and operators can meet pollutant concentration limits and primarily use the concentration as their compliance target, with far fewer units emitting at much higher concentrations using the percent reduction allowance. For these reasons, we have determined that, at least for the large MWC source category, a single pollutant concentration limit is the most prevalent compliance standard and the most protective of the environment and human health for all communities where large MWCs operate. We request comment on the proposed removal of alternative percent reduction standards for Hg, HCl, and SO₂ and on the proposed rationale for removal of these alternative standards.

For similar reasons, we also propose to remove the NO_x emissions averaging alternative provided in 40 CFR 60.33b(d)(1) of the EG. The EPA has observed that this alternative, which allows for emissions trading among large MWC sources, is scarcely used, if at all. Furthermore, the emissions averaging alternative is incompatible with the NO_x emissions standards established under the Good Neighbor Plan,²² which are similarly being proposed as part of this rule's 5-year review process in light of cost-effective retrofit options available for increased NO_x control at existing facilities. We understand that this provision may have been useful in the original 1995 rulemaking but have determined that it is no longer necessary to provide this allowance. We request comment on the proposed removal of the NO_x emissions averaging alternative and on the

proposed rationale for removal of this alternative standard.

3. Proposed Changes to Startup, Shutdown and Malfunction Provisions

In addition to the proposed actions described above, we are proposing additional revisions to the NSPS and EG. We are proposing revisions to the SSM provisions of the NSPS and EG in order to ensure that they are consistent with the decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), in which the court vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) (or 129(a)(1)) emission standards during periods of SSM. While the Court's ruling did not specifically address the legality of source-category-specific SSM provisions adopted in the 1995 large MWC rule, the decision calls into question the legality of those provisions. As such, the EPA is proposing to remove the exemption for SSM periods contained in the 1995 large MWC rule and the proposed emission standards summarized in this preamble would apply at all times.

We are not proposing a separate emission standard for large MWC units that applies during periods of startup and shutdown. We determined that large MWC units will be able to meet the emission limits during periods of warmup and startup because most units use natural gas or clean distillate oil to warm up the unit and do not add waste until the unit has reached combustion temperatures during a brief startup period. Emissions from burning natural gas or distillate fuel oil would generally be significantly lower than from burning solid wastes for most pollutants, specifically those where compliance is measured using stack tests (e.g., Cd, Pb, Hg, PM, PCDD/PCDF, and HCl).

Emissions during periods of shutdown are also generally significantly lower than emissions during normal operations because the materials in the incinerator are almost fully combusted before shutdown occurs. Furthermore, the approach for establishing MACT floors for large MWC units ranked individual MWC units based on actual performance for each pollutant and subcategory, with an appropriate accounting of emissions variability. Because we accounted for emissions variability and established appropriate averaging times to determine compliance with the standards, we believe we have adequately addressed any minor variability that may potentially occur during startup or shutdown. We request comment on the proposed removal of

the exemption for startup and shutdown periods and the rationale for applying the proposed emission standards at all times.

For NO_x, SO₂ and CO, where the current rule requires that a CEMS continuously measures the concentration, we are proposing to eliminate the exclusions of periods of warmup, startup, and shutdown from CEMS data averaging calculations present in the 1995 large MWC rules and replace them with a monitoring and compliance demonstration approach used in the more recent CAA section 129 rulemaking for CISWI NSPS and EG. First, we are proposing that CEMS data must be collected and reported whenever the large MWC unit is operating. Periods when the combustor is operating but no monitoring data are recorded due to monitor malfunctions would be considered deviations or violations.²³ This is consistent with observed increased CEMS reliability (availability) experienced for CEMS monitors operated across multiple source categories, typically greater than 99 percent, and the regulatory provisions currently associated with CEMS data availability.

Secondly, CEMS data collected while the large MWC unit is warming up (no waste is introduced to the grate), starting up (warmup period is over and waste is first fed to the grate but not at steady state operation) and shutting down (waste is no longer being fed but is burning down on grate) will be flagged as warmup, startup, or shutdown period data. CEMS data collected during warmup, startup, or shutdown periods will be averaged at stack oxygen content and not corrected to 7 percent oxygen, as are data during normal operations. This is consistent with the regulatory approach used for a subcategory of units in the CISWI (see 80 FR 3018, January 21, 2015) that are similar in type to large MWCs, where: "[P]etitioners indicated that correcting CO concentration measurements to 7 percent oxygen is problematic during startup and shutdown periods when the flue gas oxygen content approaches the oxygen content of ambient air, especially with regard to the energy recovery unit (ERU) subcategory. Oxygen contents relatively close to ambient air are often maintained during combustion unit startup and shutdown in order to safely operate the unit, but, as a result, the corrected CO values during these periods are artificially inflated due to the oxygen correction

²² The Good Neighbor Plan did not establish an emissions trading program for non-power plant industries, including large MWCs, due to inadequate baseline data and other information that would be needed to develop emissions budgets. See 88 FR 36683 June 5, 2023.

²³ This excludes periods of required routine monitor calibrations or quality assurance/quality control periods.

calculation.” To resolve this issue in the CISWI rule, the EPA determined that the 7 percent oxygen correction would not be required for CEMS data collected during periods of startup and shutdown. We are proposing a similar approach here, where the CEMS data for the warmup period (no time limit specified, but we request comment on a recommended warmup period cutoff) and up to 3 hours of allowable startup or shutdown time per occurrence will be used to calculate rolling or block average values, but will be averaged in at stack oxygen content instead of at a 7 percent oxygen diluent cap. No changes to the current 4- or 24-hour averaging periods are proposed. Instead, we are requesting comment on whether we should adopt a 30-day hourly rolling average for demonstrating compliance for pollutants measured using continuous monitoring, similar to provisions that have been promulgated in many recent combustion standards, such as CISWI and the Mercury Air Toxics Standards (40 CFR part 63, subpart UUUU) and the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters (40 CFR part 63, subpart DDDDD), as examples (see further discussion on the averaging time for CEMS below).

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 60.2) (Definition of malfunction). The EPA interprets CAA section 129 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 129 standards. This reading has been upheld as reasonable by the D.C. Circuit in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (2016). The Court's reasoning in *U.S. Sugar* applies equally to section 129 standards given the similarities between the section 112 and 129 standard setting criteria. For the reason stated earlier in this preamble, we are proposing revisions to 40 CFR 60.58b and 40 CFR 60.59b.

4. Proposed Changes for Optional Continuous Monitoring

The 2006 final amendments to the large MWC rules revised the PM and Hg compliance testing requirements to allow the optional use of a PM CEMS or Hg CEMS in place of stack testing, and would allow the optional use of multi-

metal, HCl, PCDD/PCDF CEMS in place of stack tests after performance specifications for these CEMS are promulgated (see 71 FR 27326, May 10, 2006). These amendments also allowed for continuous automated sorbent monitoring for Hg and PCDD/PCDF. Since this time, other performance specifications have been promulgated and the EPA is proposing to incorporate them into these large MWC requirements. However, another consideration is to reinvestigate whether the use of CEMS for compliance testing requires the EPA to adopt alternative emission limits. In the 2006 final rule, we made the following statements (see 71 FR 27330, May 10, 2006):

The move from once per year stack testing (where emission limits were calculated from the 99 percentile) to CEMS (99.7 percentile) suggests the emission limit should be increased if the same data averaging period is used. To address this, the final rule increases the data averaging period from 8 hours (typical particulate matter and mercury stack test period) to a 24-hr daily average if particulate matter or mercury CEMS are used. Past analysis of sulfur dioxide CEMS and nitrogen oxides CEMS data (and utility particulate matter CEMS data) indicate increasing the averaging period to a 24-hr daily average will reduce emissions variability and associated peak emissions estimates. EPA supports the optional use of particulate matter and mercury CEMS but is fully aware that no particulate matter CEMS or mercury CEMS data from MWC units are available from domestic MWC units. EPA encourages MWC owners or operators who elect to apply particulate matter or mercury CEMS, to notify EPA as soon as data are collected to allow a determination if alternative emission limits are appropriate.

Note that, if owners and operators decide to use PM or Hg CEMS for compliance demonstration purposes, these data must be submitted to EPA.

As noted in this section, more recent combustion rulemakings have been promulgated with 30-day hourly rolling averages for pollutants measured with Hg CEMS (e.g., Mercury Air Toxics Standards—40 CFR part 63, subpart UUUU) or other optional CEMS (e.g., CISWI NSPS and EG, 40 CFR part 60, subparts CCCC and DDDD). We request comment on whether the 30-day rolling hourly average is appropriate to use in the large MWC source category, both for the currently required CEMS and for optional CEMS and continuous automated sampling systems, considering potential CEMS reliability/availability concerns, especially for the optional CEMS devices that have not been extensively applied commercially and lack the extensive track record of the more established CEMS. We also request comment on whether data are

available to analyze whether an alternative emission limit should be established for pollutants that have standards based on stack test data.

5. Changes To Streamline Regulatory Text Within the Large MWC EG and NSPS

The EPA is proposing changes to the regulatory format of the large MWC standards to be more accessible and easier to follow than the 1995 large MWC rule. Paragraph text describing emission standards and performance testing requirements would be converted to tables to facilitate easier implementation and understanding of the requirements, especially as staged compliance dates are introduced with the proposed standards. These streamlining efforts do not change the regulatory numbering of the 1995 rule but do add new tables to the end of the subparts for these requirements, similar to other more recently developed CAA section 129 standards. A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 60, subparts Cb and Eb proposed in this action is available in the docket (Docket ID No. EPA-HQ-OAR-2017-0183).

6. Closing the 2007 Proposed Reconsideration of the Large MWC EG and NSPS

In this proposal, we are completing action on the March 20, 2007, notice of reconsideration that was never finalized. In that notice, we announced our reconsideration of three out of four aspects of the rule that were requested for reconsideration: operator stand-in provisions, data requirements for continuous monitors, and the status of operating parameters during the two weeks prior to Hg and PCDD/PCDF testing (see 72 FR 13016). As a brief summary:

- **Operator Stand-In Provisions**—A petitioner was concerned that the EPA was, in its operator stand-in provisions, “allow(ing) untrained employees to perform the duties of a certified chief facility operator or certified shift operator.” The EPA discussed the various certification and training requirements of the standards and concluded that the “. . . limited exemption did not undermine the MWC regulation, did not allow untrained individuals to operate the MWC, and would, in fact, improve the efficiency of the regulation by reducing unnecessary reporting and paperwork requirements” (see 72 FR 13019).

- **Data Requirements for Continuous Monitors**—Petitioners were concerned about the EPA's elimination of a

“requirement that operators obtain CEMS data for 75 percent of the operating hours per day before the data is counted toward the CEMS data availability requirements.” The Agency discussed how the CEMS data availability requirements have continually increased as CEMS have become more reliable and noted that most rules have migrated away from a daily basis and instead use a percent of operation basis. As a result, the requirements (without the daily component) are superior. We also note that we are proposing updated CEMS data availability requirements in this action which require even greater CEMS data availability than the requirements that were requested for reconsideration by petitioners (see 72 FR 13019).

- **Status of Operating Parameters**
During the Two Weeks Prior to Hg and PCDD/PCDF Testing—A petitioner claimed that the EPA “now allows MWC to avoid meeting mass carbon feed rate limits for PCDD/PCDF testing, as well as Hg testing, and increases to more than four weeks per year the total amount of time that MWC can avoid meeting mass carbon feed rate limits.” The EPA discussed the need for optimization testing and demonstrated how, out of economic and practical concerns, these are done in short, often the same, test periods so that concerns over four weeks of carbon feed rate parameters being waived are not warranted. As a result, the EPA stated that the provision for optimization testing for ACI is appropriate and the EPA is not proposing to change it (see 72 FR 13019).

Of the three issues that we granted reconsideration on and discussed in the 2007 proposal notice, only a single comment expressing support for our proposed reconsideration approach was received. Therefore, in absence of adverse comment, we are proposing to finalize our reconsideration as previously proposed.²⁴ EPA seeks comment on the issues discussed above.

7. Updating Operator Training Exam Requirements

In this proposal, we are updating the citation to and incorporating by reference the American Society of Mechanical Engineers (ASME) Standard for the Qualification and Certification of Resource Recovery Facility Operators (QRO). In the 1995 large MWC rule, the cited QRO was the 1994 version, QRO–

1–1994. Since that time, ASME has released a 2005 version as the most recent one available. This QRO is identified as QRO–1–2005 and will be incorporated by reference and updated within the text of 40 CFR 60.17(g) and 60.54b.

8. Proposed Revisions to Title V Permitting Requirements for Air Curtain Incinerators Burning Only Wood Waste, Clean Lumber, and Yard Waste

CAA section 129(e) generally requires title V permits²⁵ for “solid waste incineration units.” Under CAA section 129(g)(1), however, the term “solid waste incineration unit” does not include air curtain incinerators that only burn wood wastes, yard wastes, and clean lumber (and that comply with opacity limitations). In our view, the opacity limitations applicable under CAA 129 to such air curtain incinerators are not standards or regulations “under section 7411,” such that the air curtain incinerators would be subject to a title V permitting requirement under CAA section 502(a). The 1995 large MWC rule (see 60 FR 65387, December 19, 1995) contains a regulatory requirement that air curtain incinerators that burn only wood waste, clean lumber, and yard waste must apply for and obtain a title V operating permit. The EPA is proposing to eliminate this regulatory title V permitting requirement for such air curtain incinerators that are not located at a major source or subject to title V for other reasons.

As background, in previous rulemaking for the Other Solid Waste Incinerators EG and NSPS (40 CFR part 60 subparts EEEE and FFFF), we provided for title V permitting for these air curtain incinerators for various reasons, as explained in 70 FR 74884–74885 (December 16, 2005). In particular, we believed initially that compliance with a title V permit was necessary to assure compliance with the opacity requirements established for such incinerators. Since then, the EPA has received feedback from several states indicating that the title V requirements are unnecessarily burdensome and expensive for states to maintain for these air curtain incinerators. Based on available data, air curtain incinerators that burn exclusively wood waste, clean lumber, and yard waste are commonly located at

facilities that would not otherwise require a title V operating permit (such as land clearing operations in public or private land) and, to EPA’s knowledge, no large MWC facility also operates an air curtain incinerator on premises.²⁶ In this rulemaking, we are reconsidering the need for a regulatory requirement for title V permitting for these air curtain incineration units that are only subject to an opacity limitation and related requirements to assure compliance, because such units are not considered solid waste incineration units under CAA section 129. Also, based on input from various states on the burdens and costs of title V permitting for such incinerators, we no longer believe it is appropriate or necessary to require title V permitting. We request comment on the proposed removal of title V permitting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste under CAA section 129.

9. Electronic Reporting

The EPA is proposing that owners and operators of large MWC units submit electronic copies of required performance test reports, performance evaluation reports, semiannual compliance reports, annual reports, and certain notifications through the EPA’s Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules, available in the docket for this action. The proposed rule requires that performance test results collected using test methods that are supported by the EPA’s Electronic Reporting Tool (ERT) as listed on the ERT website²⁷ at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and other performance test results be submitted in portable document format

²⁶ CAA section 129(e) generally requires title V permits for “solid waste incineration units.” Under CAA section 129(g)(1), however, the term “solid waste incineration unit” does not include air curtain incinerators that only burn wood wastes, yard wastes, and clean lumber (and that comply with opacity limitations). In addition, in our view, the opacity limitations applicable, under CAA section 129, to such air curtain incinerators are not standards or regulations “under section 7411,” such that the air curtain incinerators would be subject to a title V permitting requirement under CAA section 502(a).

²⁷ <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

²⁴ While not necessary to respond, we note that the Pb standard aspect of the petition for reconsideration that was not granted is considered moot based on this proposed action to address the voluntary remand of the MACT floors which would result in more stringent Pb standards.

²⁵ Title V permits are required by Title V of the Clean Air Act and are legally enforceable documents designed to improve compliance by clarifying what sources must do to control pollution due to federal or state regulations. More information is available at: <https://www.epa.gov/title-v-operating-permits/basic-information-about-operating-permits>.

(PDF) using the attachment module of the ERT. Similarly, performance evaluation results of continuous emissions monitoring systems (CEMS) measuring relative accuracy test audit (RATA) pollutants that are supported by the ERT at the time of the test must be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and other performance evaluation results be submitted in PDF using the attachment module of the ERT. The proposed rule requires that certain notifications are submitted as a PDF upload in CEDRI.

For semiannual and annual reports, the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed template for these reports is included in the docket for this action.²⁸ The EPA specifically requests comment on the content, layout, and overall design of the template(s).

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. These circumstances are (1) outages of the EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports and (2) force majeure events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with the requirement to submit a report electronically. Examples of force majeure events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the request for additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the

environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan²⁹ to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy³⁰ developed in response to the White House's Digital Government Strategy.³¹ For more information on the benefits of electronic reporting, see the memorandum Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules, referenced earlier in this section.

10. Technical and Implementation Corrections

The EPA is proposing corrections and clarifications to the NSPS and EG that were identified during implementation of the previous regulations. These amendments are being made to improve the clarity of the NSPS and EG, and to make technical corrections that have been brought to the EPA's attention since the December 19, 1995, promulgation. These corrections and clarifications will improve the implementation of the regulations by large MWC owners and operators, and state and Federal air pollution control agencies.

Following is a list of the most significant revisions. Non-substantive typographical corrections are also proposed but are not listed here.

²⁹ EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154>.

³⁰ E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: <https://www.epa.gov/sites/default/files/omb/epg/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf>.

³¹ Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html>.

Applicability and Delegation of Authority

- Adding 40 CFR 60.32b(o) and 60.50b(q) to clarify that large MWC units subject to 40 CFR part 60, subpart Cb are not subject to 40 CFR part 60, subpart Db. This makes the NSPS and EG consistent with 40 CFR part 60, subpart Db, which exempts large MWC units from that subpart.

- Revising 40 CFR 60.30b(b) to clarify that approval of certain exemption claims in 40 CFR 60.32b(b)(1), (d), (e), (f)(1), and (i)(1); approval of a NO_x trading program; approval of major alternatives to test methods and monitoring; approval of waivers of recordkeeping; and performance test and data reduction waivers are retained by the EPA Administrator and not transferred to the state upon delegation of authority to the state to implement an approved state plan.

- Revising 40 CFR 60.50b(n)(2) to clarify that the EPA Administrator retains sole authority to issue the federally enforceable 11 tpd limit for exemptions in 40 CFR 60.50b(b) and the 30 percent municipal waste limit for co-fired units in 40 CFR 60.50b(j)(2).

- Revising 40 CFR 60.50b(n)(4) to correct a typographical error and clarify that the EPA Administrator retains sole authority to review and approve demonstrations that establish the relationship between carbon dioxide (not CO) and oxygen as part of initial and annual performance tests.

Definitions

- Amending the definition of "federally enforceable" in 40 CFR 60.51b to correct a cross referencing error and reference 40 CFR 51.165 and 51.166 instead of 40 CFR 51.18 and 51.24.

Performance Testing and Monitoring

- Revising 40 CFR 60.58b(f)(7) and 60.58b(k)(4) to correct an oversight and clarify that the revised testing schedule (once per calendar year, but no less than 9 months and no more than 15 months following the previous test) also applies to fugitive ash and HCl testing.

Reporting and Recordkeeping Requirements

- Revising 40 CFR 60.39b(b) and (g) to clarify that state plans were due on May 10, 2007, not April 28, 2007.

- Adding 40 CFR 60.59b(d)(2)(iii) to clarify that all data for continuous monitoring systems must be recorded using "local time" for the location where the affected facility is located unless an alternative time system is approved by the Administrator.

²⁸ See 60.59b and 60.39b Annual and Semiannual Compliance Report Proposal Draft, available at Docket ID. No. EPA-HQ-OAR-2017-0183.

• Revising 40 CFR 60.59b(g)(1) to require that owners and operators must additionally report the annual arithmetic average of all hourly values recorded during operations for the reporting year.

C. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?

Under the proposed amendments to the EG and consistent with CAA section 129, revised state plans containing the revised existing source emission limits and other requirements in the proposed amendments would be due within 1 year after promulgation of the amendments. That is, states would have to submit revised plans to the EPA 1 year after the date on which the EPA promulgates revised standards.

The proposed amendments to the EG would then allow existing large MWC units to demonstrate compliance with the amended standards as expeditiously as practicable after approval of a state plan, but no later than three years from the date of approval of a state plan or five years after promulgation of the revised standards, whichever is earlier. Consistent with CAA section 129, the EPA expects states to require compliance as expeditiously as practicable. However, because we anticipate that many large MWC units will find it necessary to retrofit existing emission control equipment and/or install additional emission control equipment to meet the proposed revised limits, the EPA anticipates that states may choose to provide the 3-year compliance period allowed by CAA section 129(f)(2).³²

In revising the standards in a state plan, a state would have two options. First, it could include both the 2006 large MWC standards and the new standards in its revised state plan, which would allow a phased approach

in applying the new limits. That is, the state plan would make it clear that the standards in the 2006 large MWC rule remain in force for large MWC units and apply until the date the revised existing source standards are effective (as defined in the state plan).³³ Second, states whose existing large MWC units do not need to improve their performance to meet the revised standards may consider an alternative approach where the state would replace the 2006 large MWC rule standards with the standards in the final rule, follow the procedures in 40 CFR part 60, subpart B, and submit a revised state plan to the EPA for approval. If the revised state plan contains only the revised standards (*i.e.*, the 2006 large MWC rule standards are not retained), then the revised standards must become effective immediately for those units that are subject to the 2006 large MWC rule, since the 2006 large MWC rule standards would be removed from the state plan. We request comment on the feasibility of the proposed compliance dates and rationales.

The EPA will revise the existing Federal plan to incorporate any changes to existing source emission limits and other requirements that the EPA ultimately promulgates. The Federal plan applies to large MWC units in any state without an approved state plan. The proposed amendments to the EG would allow existing large MWC units subject to the Federal plan up to five years after promulgation of the revised standards to demonstrate compliance with the amended standards, as required by CAA section 129(b)(3).

IV. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The large MWC source category comprises units with a capacity greater

than 250 tpd of MSW. The current population of large MWC units is estimated to include 152 units at 57 facilities nationwide. Of these, 129 (85 percent) are mass burn units, and the remaining are refuse-derived fuel systems. Approximately 30 percent of currently operating large MWCs are subject to 40 CFR part 60, subpart Eb (2006 NSPS limits), with the remaining subject to 40 CFR part 60, subparts Ea (NSPS limits for units constructed after December 20, 1989, and on or before September 20, 1994) or Cb (EG for units constructed before September 20, 1994). We estimate that there are 22 municipally owned or operated facilities with a total of 62 municipally owned or operated large MWC units.

B. What are the air quality impacts?

We have estimated the potential emissions reductions from existing sources that may be realized through implementation of the emission limits under consideration. Emissions reductions were estimated for all units where add-on controls, improvements to existing control devices, or increased carbon or lime injection rates would likely be required to meet a given limit.³⁴ Because good combustion practices are assumed to be the most effective control for CO, as opposed to add-on controls or control improvements, no additional control costs or associated emission reduction benefits were assessed for CO.³⁵ For all other pollutants, it was assumed that units would comply with emission limits by operating the control measure(s) described in the large MWC cost memorandum.³⁶ Reductions in PM less than 2.5 microns (PM_{2.5}) were also assessed. These reductions are presented in Table 7 of this preamble.

TABLE 7—ESTIMATED EMISSIONS REDUCTIONS BY REGULATORY SCENARIO

Pollutant	Unit of measure	Reductions achieved through MACT floor scenario	Reductions achieved through beyond-the-floor/5-year review scenario	Reductions achieved through proposed scenario
Cd	ton/yr	0.0443	0.0572	0.0443
Pb	ton/yr	0.181	0.812	0.181
PM	ton/yr	24.4	87.7	24.4

³² The CAA Section 129 does not require EPA to establish the control technology sources must use to meet a numeric emission limit. The costs are based on assumptions of air pollution control device retrofits, new equipment, or increased use of sorbent that may be needed to comply with the emission limits, but owners will evaluate and use the controls that they determine are necessary for their source.

³³ All sources currently subject to the 1995 large MWC EG or NSPS will become existing sources once the final revised large MWC standards are in place. See section III.B above.

³⁴ See memorandum “Emission Reduction Estimates for Existing Large MWCs” available at Docket ID. No. EPA-HQ-OAR-2017-0183.

³⁵ Furthermore, the annual maximum data for the majority of sources do not reflect actual performance. As noted in section III.B.3., we are

proposing significant changes to the continuous monitoring reporting provisions so that we have access to continuous data. Therefore, an assessment of any presumed emission reductions in comparison to the reevaluated MACT floor for CO is not possible at this time.

³⁶ See memorandum “Compliance Cost Analyses for Proposed Large MWC Rule Amendments” available at Docket ID. No. EPA-HQ-OAR-2017-0183.

TABLE 7—ESTIMATED EMISSIONS REDUCTIONS BY REGULATORY SCENARIO—Continued

Pollutant	Unit of measure	Reductions achieved through MACT floor scenario	Reductions achieved through beyond-the-floor/ 5-year review scenario	Reductions achieved through proposed scenario
PM _{2.5}	ton/yr	14.2	47.1	14.2
Hg	lb/yr	57.0	333	57.0
PCDD/PCDF	g/yr	52.2	249	52.2
HCl	ton/yr	344	928	344
SO ₂	ton/yr	2,420	4,350	2,420
NO _x	ton/yr	2,230	11,400	11,400
Total	ton/yr	5,020	16,800	14,200

Indirect or secondary air emissions can result from the increased energy requirements associated with the operation of new control devices (*i.e.*, increased emissions of criteria pollutants from the power plants supplying that additional electricity). However, the reevaluated emission limits for large MWCs are unlikely to have any consequential secondary air impacts, because the increase in energy requirements due to new control measures is minimal, and what little additional energy is required would be redirected from power already being generated at the plant.

We expect that existing units still operating electrostatic precipitators for particulate control will retrofit with a fabric filter control device, but the difference in energy needs for each of these devices is expected to be minimal. Furthermore, any improvements made to existing fabric filters will not be significant enough to require a larger fan, meaning that electricity consumption would remain unchanged. For NO_x control, most units already have SNCR, so further control would require retrofitting with ASNCR or LNTM NO_x technology. Existing SNCR equipment would likely be used by these retrofit options, meaning any additional power consumption requirements would be minimal. In the rare case where a unit goes from no SNCR to SNCR, the minimal amount of power required to pump reagent to the furnace would be supplied by the unit's own generating capabilities, rather than through fossil fuel combustion. We expect Hg and PCDD/PCDF to be further controlled through increased carbon injection for units that already have ACI systems, or with the installation of new ACI systems. Increases in power demand for existing systems and demand for new systems are both expected to be minimal and would be met with a small fraction of the power generation from the facility. Similarly, power demand increases for acid gas

control systems are expected to be minimal and met with power that facilities are already generating. Acid gases are typically controlled with a dry sorbent injector scrubber or spray dryer absorber. Additional control (*i.e.*, increased sorbent injection rates in the existing control device) would require only minimal increases in sorbent conveying equipment power needs. If an owner or operator determined a need for a retrofit to a CFBS to meet the standards for acid gases, this retrofit could provide a small savings in sorbent injection and power consumption needs. A CFBS is generally more effective at acid gas control for the same amount of sorbent and at an equal to lesser power consumption than spray dryer absorbers.

C. What are the water, solid waste, and energy impacts?

We anticipate affected sources will need to apply additional controls to meet the proposed emission limits. These control measures impact waste disposal, water usage, and electricity requirements.

PM controls or control improvements will increase the amount of particulate collected that will require disposal. Increased ACI rates for Hg and PCDD/PCDF control, as well as increased lime injection for acid gas control, will also require additional waste disposal. The total amount of solid waste that would require disposal as a result of control measures implemented to meet the proposed limits is anticipated to be approximately 66,800 tpy. This includes 16.7 tpy from PM capture, 15,000 tpy from carbon injection, and 51,800 tpy from lime injection.

Advanced SNCR for NO_x control is the only control measure among those expected to be implemented which will require additional water usage, as water is used in the reagent solution injected into the furnace and/or flue gas duct. We estimate that 42,800,000 gallons of water per year will be used for new NO_x

control. The injected liquid evaporates in the flue gas stream, so there would be no associated wastewater disposal requirements.

The energy impacts associated with meeting the proposed emission limits would consist primarily of additional electricity needs to run added or improved controls. However, large MWCs are already generating their own electricity, and the power demand for added or improved controls would be met at the cost of electricity sales to customers. The installation of fabric filters would require some unit downtime, which would result in a decrease in a facility's electricity production. We estimate an electricity loss of approximately 35,300 megawatt-hours for PM control.

Although we anticipate minimal growth in this source category, we recognize the possibility that some new units may be installed in the future. However, we expect any new units to be similar to the most recently constructed large MWC, which can already meet the limits considered for each option. Therefore, no additional controls or associated secondary impacts are anticipated for new sources as a result of the proposed limits.

Further details regarding water, solid waste, and energy impacts for new and existing sources are provided in the large MWC secondary impacts memorandum.³⁷

D. What are the cost impacts?

We have estimated compliance costs for all existing units to add the necessary controls to meet the proposed standards.³⁸ We anticipate an overall capital investment of approximately \$309 million, with an associated total

³⁷ "Secondary Impacts of Control Scenarios for Large MWC Standards" available at Docket ID. No. EPA-HQ-OAR-2017-0183.

³⁸ See memorandum "Compliance Cost Analyses for Proposed Large MWC Rule Amendments" available at Docket ID. No. EPA-HQ-OAR-2017-0183.

annualized cost (including operating and maintenance costs) of approximately \$99.8 million (in 2022

dollars). The cost breakdown by pollutant grouping and regulatory

option are provided in Table 8 of this preamble.

TABLE 8—COMPLIANCE COSTS BY REGULATORY OPTION
[2025–2044]

Pollutant grouping	MACT floor limit option		Beyond-the-floor/5-year review option		Proposed option	
	Total capital cost (\$)	Total annual cost (\$/yr) ^a	Total capital cost (\$)	Total annual cost (\$/yr) ^a	Total capital cost (\$)	Total annual cost (\$/yr) ^a
Particulates (Cd, Pb, PM)	\$35,700,000	\$5,460,000	\$113,000,000	\$16,400,000	\$35,700,000	\$5,460,000
Hg and PCDD/PCDF	16,400,000	22,000,000	65,000,000	121,000,000	16,400,000	22,000,000
Acid gases (HCl and SO ₂) .....	.....	12,900,000	1,120,000,000	386,000,000	.....	12,900,000
NO _x	50,800,000	10,800,000	257,000,000	59,400,000	257,000,000	59,400,000
Total control costs	103,000,000	51,100,000	1,560,000,000	582,000,000	309,000,000	99,800,000

^a Includes operating and maintenance costs. Capital annualized over 20 years at an interest rate of 7.5% unless noted otherwise (See “Compliance Cost Analyses of the Proposed Rule Amendments for Large MWC Rule Amendments” memorandum in the docket to this rulemaking for more details).

E. What are the economic impacts?

The EPA conducted an economic impact analysis for the proposed rule in the Regulatory Impact Analysis (RIA), which is available in the docket for this action. If the compliance costs, which are key inputs to an economic impact analysis, are small relative to the receipts of the affected companies, then the impact analysis may consist of a calculation of annual (or annualized) costs as a percent of sales for affected parent companies. This type of analysis is often applied when a partial equilibrium or more complex economic impact analysis approach is deemed unnecessary given the expected size of the impacts. The annualized cost per sales for a company represents the maximum price increase in the affected product or service needed for the company to completely recover the annualized costs imposed by the regulation, assuming no change in affected output. We conducted a cost-to-sales analysis to estimate the economic impacts of this proposal, given that the equivalent annualized value (EAV) of the compliance costs over the period of 2025 to 2044 are \$120 million using a 7 percent or \$110 million using a 3 percent discount rate in 2022 dollars, which is small relative to the revenues of the affected industry.

The EPA estimated the annualized compliance cost each firm is expected to incur and determined the estimated cost-to-sales ratio for affected units. This cost averages 0.15 percent of parent company revenue and does not exceed 3.5 percent of parent company revenue for any affected unit. The estimated cost-to-sales ratio for affected entities, none of which are small according to Small Business Administration size standards, averages 1.1 percent and does

not exceed 4.4 percent.³⁹ Therefore, the projected economic impacts of the expected compliance costs of the proposal are likely to be relatively small as compared to parent company revenue.

F. What are the benefits?

Pursuant to E.O. 12866 as amended by E.O. 14094, the RIA for this action analyzes the benefits associated with the projected emissions reductions under this proposal to inform the EPA and the public about these projected impacts.

This proposed rule is projected to reduce emissions of Hg and non-Hg metal hazardous air pollutant (HAP), PM_{2.5}, SO₂, and NO_x nationwide. The potential impacts of these emissions reductions are discussed in detail in Section 4 of the RIA.

The projected reductions in Hg are expected to reduce the bioconcentration of methylmercury in fish. Subsistence fishing is associated with vulnerable populations, including minorities and those of low socioeconomic status.

The potential benefits from reducing Hg and non-Hg metal HAP were not monetized and are therefore not reflected in the benefit-cost estimates associated with this proposal due to methodology and data limitations. Instead, we provide a qualitative discussion of the health effects associated with HAP emitted from sources subject to control under the proposed action. The EPA remains

committed to supporting research to address these limitations. Potential benefits from reductions of PCDD/PCDF and reduction in nitrogen and sulfur deposition were also not monetized in this analysis and are therefore not directly reflected in the quantified benefit-cost comparisons. We anticipate that taking these non-monetized effects into account would show the proposal to have a greater net benefit.

The proposed control measures to reduce HAP and PM_{2.5} emissions could improve air quality and the health of persons living in surrounding communities. The proposed control measures are expected to reduce about 0.23 tpy of HAP metal emissions, including emissions of Cd, Pb, Hg, and PCDD/PCDF. We provide a qualitative discussion of the health effects associated with HAP emitted from sources subject to control under the proposed action in Section 4.2 of the RIA, available in the docket for this action. The EPA remains committed to improving methods for estimating HAP benefits by continuing to explore additional aspects of HAP-related risk from large MWCs, including the distribution of that risk.

The proposed control measures are also estimated to reduce PM_{2.5} emissions by about 14 tpy for the source category. The EPA estimated monetized benefits related to avoided premature mortality and morbidity associated with reduced exposure to PM_{2.5} for 2025 to 2044. The present value (PV) of the short-term benefits for the proposed rule range from \$5.1 billion at a 3 percent discount rate to \$3.3 billion at a 7 percent discount rate with an EAV of \$340 million and \$310 million, respectively. The EAV represents a flow of constant annual values that would

³⁹ The proposal is expected to generate annual compliance cost increases greater than 2 percent of annual revenue for five out of 21 ultimate parent entities. Of these, three are municipally owned, one was previously owned by a collection of municipalities, and one is privately owned with 56 units under one parent company. The average cost-to-sales ratio of the remaining 16 entities is approximately 0.35 percent.

yield a sum equivalent to the PV. The PV of the long-term benefits for the proposed rule range from \$17 billion at a 3 percent discount rate to \$10 billion at a 7 percent discount rate with an EAV of \$1.1 billion and \$960 million, respectively. All estimates are reported in 2022 dollars. For the full set of underlying calculations see the *LMWC Workbook*, available in the docket for this action.

G. What environmental justice analysis did we conduct?

The locations of the new, modified, and reconstructed sources that will become subject to the proposed large MWC NSPS (40 CFR part 60, subpart Eb) are not known. Therefore, to examine the potential for any EJ issues that might be associated with the proposed NSPS, we performed a proximity demographic analysis for all 57 existing large MWC facilities that are currently subject to 40 CFR part 60, subparts Cb, Ea and Eb. These characterize populations near existing

facilities that might modify or reconstruct in the future and become subject to the proposed NSPS requirements. This proximity demographic analysis characterized the individual demographic groups of the populations living within 5 kilometers (approximately 3.1 miles) and within 50 kilometers (approximately 31 miles) of the existing facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

The results of the proximity demographic analysis are shown in Table 9 of this preamble. The percent of the population living within 5 kilometers of the existing large MWC facilities in the following racial/ethnicity demographics are above the national average: African American (20 percent versus 12 percent nationally), Hispanic/Latino (23 percent versus 19 percent nationally), and other/multiracial (9 percent versus 8 percent nationally). In addition, the percent of

population living within 5 kilometers of the existing large MWC facilities is above the national average for the following demographics: people living below the poverty level (16 percent versus 13 percent nationally), people over 25 without a high school diploma (15 percent versus 12 percent nationally), and those experiencing linguistic isolation (8 percent versus 5 percent nationally).

The percent of the population living within 50 kilometers of the existing large MWC facilities in the following racial/ethnicity demographics are above the national average: African American (14 percent versus 12 percent nationally), Hispanic/Latino (21 percent versus 19 percent nationally), and other/multiracial (11 percent versus 8 percent nationally). In addition, the percent of population living within 50 kilometers of the large MWC existing facilities is above the national average for linguistic isolation (8 percent versus 5 percent nationally).

TABLE 9—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR LARGE MWC FACILITIES

Demographic group	Nationwide	Population within 50 km of 57 facilities	Population within 5 km of 57 facilities
Total population	328,016,242	82,056,095	3,916,651
Race and Ethnicity by Percent			
White	60	54	48
African American	12	14	20
Native American	0.7	0.3	0.4
Hispanic or Latino (includes white and nonwhite)	19	21	23
Other and multiracial	8	11	9
Income by Percent			
Below poverty level	13	12	16
Above poverty level	87	88	84
Education by Percent			
Over 25 and without a high school diploma	12	12	15
Over 25 and with a high school diploma	88	88	85
Linguistically Isolated by Percent			
Linguistically isolated	5	.....	.....

Notes:

- The nationwide population count and all demographic percentages are based on the Census' 2015–2019 American Community Survey 5-year block group averages and include Puerto Rico. Demographic percentages based on different averages may differ. The total population counts within 5 km and 50 km of all facilities are based on the 2010 Decennial Census block populations.
- To avoid double counting, the “Hispanic or Latino” category is treated as a distinct demographic category for these analyses. A person is identified as one of five racial/ethnic categories above: White, African American, Native American, Other and Multiracial, or Hispanic/Latino. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

The proposed large MWC NSPS and EG (40 CFR part 60, subparts Cb and Eb) cover new and existing solid waste incineration units “with capacity greater than 250 tons per day combusting municipal waste.” The proposed

standards would increase stringency of existing regulation of emissions of the nine pollutants listed in CAA section 129: Cd, Hg, Pb, PM, HCl, SO₂, PCDD/PCDF, CO, and NO_x, among other proposed actions (see section I.A of this

preamble for a summary of the major requirements being proposed). As discussed in section IV.B, the proposed amendments to the large MWC NSPS and EG would result in an estimated

14,200 tons per year reduction in regulated pollutants.

The methodology and the results (including facility-specific results) of the demographic analysis are presented in the document titled *Analysis of Demographic Factors for Populations Living Near Large Municipal Waste Combustors*, which is available in the docket for this action.

V. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the analyses, including data on the number of facilities that will require retrofit and data to inform EPA’s projections of APCD use by large MWCs. We are specifically interested in receiving any information regarding developments in practices, processes, and control technologies that reduce pollutant emissions.

VI. Statutory and Executive Order Reviews and 1 CFR Part 51

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a “significant regulatory action” as defined under section 3(f)(1)

of Executive Order 12866, as amended by Executive Order 14094. Accordingly, the EPA submitted this action to the OMB for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, “*Regulatory Impact Analysis for the Proposed Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors*,” can be found in the docket for this action.

Table 10 of this preamble presents the estimated PV and EAV of the projected health benefits, compliance costs, and net benefits of the proposed rule in 2022 dollars discounted to 2023. The estimated monetized net benefits are the projected monetized benefits minus the projected monetized costs of the proposed rule.

In assessing the potential costs and benefits of its actions, EPA includes all potential costs and benefits, and not just those that stem from the regulated pollutants. Moreover, as explained in detail in the RIA, it is not possible to monetize the vast majority of the public health benefits associated with reductions of HAP. Accordingly, the projected monetized health benefits include those related to public health associated with projected reductions in fine PM (PM_{2.5}) and ozone

concentrations. The projected health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. There are no changes in emissions from climate pollutants such as carbon dioxide (CO₂) as determined in the analysis of secondary air impacts in section IV.B of the preamble. Thus, there are no climate benefits or disbenefits to be accounted for in the estimates of benefits for this proposal. The compliance costs are represented in this analysis as the costs of control technologies and measures applied to meet the emissions limits in the proposed policy scenario described earlier in this preamble. In simple terms, these costs are an estimate of the increased expenditures for large MWCs to implement the proposed requirements.

These results present an incomplete overview of the potential effects of the proposal because important categories of benefits—including benefits from reducing Hg and non-Hg metal HAP and the benefits from increased transparency of emissions—were not monetized and are therefore not reflected in the benefit-cost tables. We anticipate that taking non-monetized effects into account would show the proposal to have a greater net benefit than this table reflects.

TABLE 10—PROJECTED MONETIZED BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE PROPOSED RULE, 2025 TO 2044
[Millions of 2022 dollars, discounted to 2023 dollars] ^a

	3% Discount rate	7% Discount rate
PV:		
Health benefits ^{c d}	\$5,100 and \$16,000	\$3,100 and \$9,800.
Compliance costs	\$1,700	\$1,200.
Net benefits	\$3,400 and \$14,000	\$1,800 and \$8,500.
EAV: ^b		
Health benefits ^{c d}	\$340 and \$1,100	\$290 and \$920.
Compliance costs	\$110	\$120.
Net benefits	\$230 and \$970	\$170 and \$800.

^a Values have been rounded to two significant figures. Rows may not appear to sum correctly due to rounding.

^b The annualized present value of costs and benefits are calculated over the 20-year period from 2025 to 2044. The choice of this analysis period is explained in the RIA for the proposal.

^c The projected monetized benefits include those related to public health associated with reductions in PM_{2.5} and ozone concentrations. The projected health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent.

^d Several categories of benefits remain unmonetized and are thus not reflected in the table. Non-monetized benefits include important benefits from reductions in HAP including Cd, Pb, and PCDD/PCDF emissions. In addition, benefits to provision of ecosystem services associated with reductions in nitrogen and sulfur deposition and ozone concentrations are not monetized.

As shown in Table 10 of this preamble, at a 3 percent discount rate, this proposed rule is projected to reduce PM_{2.5} and ozone concentrations, producing a projected PV of monetized health benefits of about \$5.1 billion and \$16 billion, with an EAV of about \$340

million and \$1.1 billion discounted at 3 percent. The PV of the projected compliance costs are \$1.7 billion, with an EAV of about \$110 million discounted at 3 percent. Combining the projected benefits with the compliance costs yields a net benefit PV estimate of

\$3.4 billion and \$14 billion and an EAV of \$250 million and \$1.0 billion.

At a 7 percent discount rate, this proposed rule is expected to generate projected PV of monetized health benefits of \$3.1 billion and \$9.8 billion, with an EAV of about \$290 million and

\$920 million. The PV of the projected compliance costs are \$1.2 billion, with an EAV of \$120 million discounted at 7 percent. Combining the projected benefits with the projected compliance costs yields a net benefit PV estimate of \$1.8 billion and \$8.5 billion and an EAV of \$170 million and \$800 million.

The potential benefits from reducing Hg and non-Hg metal HAP were not monetized and are therefore not reflected in the benefit-cost estimates associated with this proposal. Potential benefits from PCDD/PCDF emission reductions and reduced nitrogen and sulfur deposition are not monetized in this analysis and are therefore not directly reflected in the quantified benefit-cost comparisons. We anticipate that taking these non-monetized effects into account would show the proposal to have a greater net benefit.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) documents that the EPA prepared has been assigned EPA ICR number 1847.10 for subpart Cb (OMB Control number 2060–0390) and 1506.15 for subparts Ea and Eb (OMB Control number 2060–0210). You can find a copy of the ICR for each subpart in the docket for this rule, and they are briefly summarized here.

These regulations apply to facilities that own and operate MWC units with a combustion capacity greater than 250 tpd of MSW that were constructed on or before September 20, 1994 (subject to 40 CFR 60, subpart Cb), facilities for which construction is commenced after December 20, 1989 and on or before September 20, 1994 (subject to 40 CFR 60, subpart Ea), or for which construction is commenced after September 20, 1994 or for which modification or reconstruction is commenced after June 19, 1996 (subject to 40 CFR 60, subpart Eb). The reporting and recordkeeping requirements discussed below result from the EG that apply to large MWCs covered by the EPA-approved and effective state plans and, where a state plan has not been approved, large MWCs covered by the Federal plan, and large MWCs subject to the NSPS. This information is being collected to ensure compliance with 40 CFR part 60, subparts Cb and Eb. In general, all EG and NSPS require initial notifications, performance tests, and periodic reports by the owners or operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any SSM in the operation of an affected facility,

or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to EG or NSPS.

The proposed amendments to the EG and NSPS would remove SSM exclusions and exceptions. These proposed amendments would also streamline regulatory language, revise recordkeeping, and require electronic reporting requirements; re-establish new and existing source applicability dates; clarify requirements for air curtain incinerators; correct certain typographical errors; make certain technical corrections and clarify certain provisions in the NSPS and EG. See section 4 of the Supporting Statement to the ICR for these proposed amendments in the docket to this rulemaking for more details.

For the proposed amendments to the EG in 40 CFR part 60, subpart Cb, the EPA is also proposing to revise all emission limits, except CO for two combustor subcategories. Similarly, for the proposed amendments to NSPS 40 CFR part 60, subpart Eb, the EPA is proposing to revise all emission limits.

Because EPA is proposing to revise applicability dates and ultimately reserve subpart Ea, the burden associated with units currently subject to subparts Ea and Eb has been combined with the burden for those currently subject to subpart Cb. The EPA does not anticipate any construction of new units or NSPS-triggering reconstruction or modifications of existing units within the next 3 years.

Respondents/affected entities:

Existing large MWC units constructed on or before January 23, 2024, or that are reconstructed or modified prior to the date 6 months after promulgation of any revised final standards.

Respondent's obligation to respond:

Mandatory (40 CFR 60, subparts Cb, Ea, and Eb).

Estimated number of respondents: 57.

Frequency of response: Annual.

Total estimated burden: 980 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$100,000 (per year), includes no annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the

accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than February 22, 2024. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. We have estimated that no small entities would be affected by the proposed changes to the EG and NSPS. For more information, please refer to the RIA for the proposed rule.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action may contain a Federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of \$100 million or more for state and local governments, in the aggregate, and on the private sector. As explained in section VI.F, this action does not impose specific requirements on tribal governments. As a result of these potential impacts to governmental entities and the private sector, the EPA initiated consultation with these entities. The EPA also held meetings described in section VI. E of this preamble under Federalism consultation.

E. Executive Order 13132: Federalism

The EPA has concluded that this action has federalism implications under EPA policy for implementing E.O. 13132, Federalism, because the rule imposes substantial direct compliance costs on state or local governments, and the Federal government will not provide the funds necessary to pay those costs. The EPA conducted a Federalism/UMRA consultation outreach briefing on March 16, 2023. Invited participants included representatives from the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the International City/County Management Association, the National

Association of Towns and Townships, the County Executives of America, and the Environmental Council of States to request their input on this rulemaking. Additionally, the Agency invited representatives from the National Association of Clean Air Agencies, the Association of Air Pollution Control Agencies, the Association of State and Territorial Solid Waste Management Officials, and other groups representing state and local government professionals. The purpose of the consultation was to provide general background on the rulemaking, answer questions, and solicit input from these national associations' state and local government members. Due to interest in this action, additional outreach meetings were held on April 17, 2023, and April 27, 2023, and included local government representatives of both the U.S. Conference of Mayors and the Waste To Energy Association, respectively. Subsequent to the outreach meetings, the EPA received letters from multiple organizations. These letters were submitted to the pre-proposal non-rulemaking docket. See Docket ID No. EPA-HQ-OAR-2022-0920. A detailed Federalism Summary Impact Statement (FSIS) describing the most pressing issues raised in pre-proposal and post-proposal comments will be forthcoming with the final action, as required by section 6(b) of Executive Order 13132. In the spirit of E.O. 13132, and consistent with EPA policy to promote communications between state and local governments, the EPA specifically solicits comment on these proposed actions from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The EPA is not aware of any large MWC unit owned or operated by tribal governments. During the development of this action, the EPA offered pre-proposal government-to-government consultation with Tribal Nations. No Tribal Nations requested consultation with the EPA. This action will not have substantial direct costs or impacts on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed amendments. Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, the EPA will offer post-proposal government-to-government

consultation with all federally recognized tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" because the proposed amendments are not likely to have a significant adverse effect on the supply, distribution, or use of energy. There would be no change in energy consumption resulting from the proposed amendments, and the EPA does not expect any price increase for any energy type. We also expect that there would be no impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. Therefore, the EPA conducted searches through the Enhanced National Standards System Network Database managed by the American National Standards Institute (ANSI) to determine if there are voluntary consensus standards (VCS) that are relevant to this action. The Agency also contacted VCS organizations and accessed and searched their databases.

We conducted searches for EPA Methods 1, 3A, 3B, 5, 6, 6A, 6C, 7, 7A, 7C, 7D, 7E, 9, 10, 10A, 10B, 19, 22, 23, 26, 26A, 29 of 40 CFR part 60, Appendix A. No applicable voluntary consensus standards were identified for EPA Methods 6C, 7D, 7E, 19 and 22.

During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA considered it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for these rules. This review

requires significant method validation data which meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

Three voluntary consensus standards were identified as an acceptable alternative to EPA test methods for the purposes of these rules.

The EPA proposes to allow use of the manual portion only and not the instrumental portion of voluntary consensus standard ANSI/ASME PTC 19-10-1981 Part 10 (2010), "Flue and Exhaust Gas Analyses" as an acceptable alternative to EPA Methods 3B, 6, 6A, 6B, 7, 7C. This method is available at the American National Standards Institute (ANSI), 1899 L Street NW, 11th Floor, Washington, DC 20036 and the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016-5990. See <https://www.ansi.org> and <https://www.asme.org>. The standard is available to everyone at a cost determined by ANSI/ASME (\$96). The cost of obtaining this method is not a significant financial burden, making the methods reasonably available.

The EPA proposes to allow the use of the voluntary consensus standard ASTM D7520-16, "Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere" as an acceptable alternative to EPA Method 9 only if the following conditions are followed:

1. During the digital camera opacity technique (DCOT) certification procedure outlined in Section 9.2 of ASTM D7520-16, you or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand).
2. You must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520-16.
3. You must follow the record keeping procedures outlined in 40 CFR 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination.
4. You or the DCOT vendor must have a minimum of 4 independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of anyone reading and the average error must not exceed 7.5 percent opacity.

5. This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software, and operator in accordance with ASTM D7520–16 and conditions 1 to 4 above is on the facility, DCOT operator, and DCOT vendor.

This method is available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See <https://www.astm.org>. The standard is available to everyone at a cost determined by ASTM (\$90). The cost of obtaining this method is not a significant financial burden, making the method reasonably available.

The EPA proposes to allow the use of the voluntary consensus standard ASTM D6784–16, “Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)” (D6784–16 was reapproved in 2016 to include better quality control than earlier 2008 version) as an acceptable alternative to EPA Method 29 (portion for Hg only) as a method for measuring Hg. Note that this approval applies to concentrations approximately in the range of 0.5 to 100 micrograms per standard cubic meter ($\mu\text{g}/\text{Nm}^3$). This method is available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See <https://www.astm.org>. The standard is available to everyone at a cost determined by ASTM (\$82). The cost of obtaining this method is not a significant financial burden, making the method reasonably available.

In addition, for the purpose of this rule, the EPA proposes to allow the use of facility operator certification method ASME QRO–1–2005 (R2015), Standard for the Qualification and Certification of Resource Recovery Facility Operators. The 1995 rule cited a certification for facility operator ASME QRO–1–1994. Since that time, ASME has released a 2005 version as the most recent one available. This method is available at the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990. See <https://www.asme.org>. The standard is available to everyone at a cost determined by ASME (\$59). The cost of obtaining this method is not a significant financial burden, making the methods reasonably available.

Additional information for the VCS search and determinations can be found in the memorandum, *Voluntary Consensus Standard Results for Large Municipal Waste Combustors NSPS and EG*, which is available in the docket for

this action (Docket ID No. EPA–HQ–OAR–2017–0183).

Under 40 CFR 60.8(b) and 60.13(i) of subpart A of the General Provisions, a source may apply to the EPA to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures in the final rule or any amendments. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in these regulations.

The EPA is incorporating by reference the VCS ANSI/ASME PTC 19.10–1981 Part 10 (2010), “*Flue and Exhaust Gas Analyses*” as an acceptable alternative to EPA Method 3B, 6, 6A, 6B, 7, 7C. for the determination of oxygen content (manual procedures only); the VCS ASTM D7520–16, “*Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere*” as an acceptable alternative to EPA Method 9 only if certain conditions are followed as described above; and the VCS ASTM D6784–16, “*Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)*,” as an acceptable alternative to EPA Method 29 (Hg portion only) as a method for measuring Hg. Further, the EPA is incorporating by reference facility operator certification method ASME QRO–1–2005 (R2015), “*Standard for the Qualification and Certification of Resource Recovery Facility Operators*,” as an updated certification to the 1994 version that has been incorporated by reference in the current rules.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. As stated in Section IV.F. of this preamble, the locations of the new, modified, and reconstructed sources that will become subject to the proposed large MWC NSPS (40 CFR 60, subpart Eb) are not known. Therefore, to examine the potential for any EJ issues that might be associated with the

proposed NSPS, we performed a proximity demographic analysis for the 57 existing large MWC facilities that are currently subject to 40 CFR part 60, subparts Cb, Ea and Eb. These characterize populations near existing facilities that might modify or reconstruct in the future and become subject to the proposed NSPS requirements.

For large MWCs, a total of 3.9 million people live within 5 kilometers (approximately 3.1 miles) of existing facilities. The proportion of demographic groups living near large MWC facilities are above the national average, include African American, Hispanic or Latino and other/multiracial populations. The proportion of other demographic groups living within 5 kilometers of large MWC facilities is similar or lower than the national average. See section IV.F for an analysis that characterizes populations living in proximity of facilities and risks prior to the proposed regulation.

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. While the locations of the new, modified, and reconstructed sources that will become subject to the proposed large MWC NSPS (40 CFR 60 subpart Eb) are not known, this action proposes to establish standards for large MWC emission sources that will enhance protection for these populations by reducing pollutant emissions at future modified and reconstructed sources and minimizing future emission increases resulting from new sources. The proposed amendments to the EG and NSPS would also remove exclusions and exceptions from compliance during periods of SSM.

The EPA additionally identified and addressed EJ concerns by engaging in outreach activities to communities we expect to be impacted most by the rulemaking (see section II.F).

The information supporting this Executive Order review is contained in Section IV.G of this preamble. The demographic analysis is presented in the document *Analysis of Demographic Factors for Populations Living Near Large Municipal Waste Combustors*, which is available in the docket for this action.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference,

Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

[FR Doc. 2024-00747 Filed 1-22-24; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-16

[FTR Case 2022-04 Docket No. GSA-FTR-2023-0017, Sequence No. 2]

RIN 3090-AK65

Federal Travel Regulation (FTR); Relocation Allowances— Miscellaneous Expenses Allowance

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The United States General Services Administration (GSA) is proposing to amend the FTR by removing the relocation miscellaneous expenses allowance (MEA) lump sum amounts from the FTR. These lump sum amounts will be published in FTR Bulletins on an intermittent basis, much like what is done for per diem and mileage rates. The relocation MEA actual (as opposed to lump sum) amounts are unchanged and will remain in the FTR. The proposed rule would also update the types of expenses that may or may not be reimbursed by relocation MEA when employees itemize under actual expense. The proposed rule would also update and clarify other relocation MEA regulatory sections and rearrange them into a more sequential order.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before March 25, 2024 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FTR Case 2022-04 to: *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FTR Case 2022-04”. Select the link “Comment Now” that corresponds with “FTR Case 2022-04.” Follow the instructions provided on the screen. Please include your name, company name (if any), and “FTR Case 2022-04” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the

FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite FTR Case 2022-04, 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. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Rodney (Rick) Miller, Program Analyst, Office of Government-wide Policy, at 202-501-3822 or travelpolicy@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FTR Case 2022-04.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of Significant Changes

GSA is proposing to amend the FTR by removing the relocation MEA lump sum amounts, providing that lump sum amounts will be published in FTR Bulletins on an intermittent basis, rearranging the relocation MEA sections into a more sequential order, clarifying and modifying relocation MEA sections by updating employee eligibility for relocation MEA, and updating examples of expenses for which relocation MEA may be authorized or not.

Pursuant to 5 United States Code (U.S.C.) 5738, the Administrator of General Services is authorized to prescribe regulations necessary to implement laws regarding Federal employees when assigned a temporary change of station (TCS) or when otherwise transferred in the interest of the Government. The overall implementing authority is the FTR, codified in title 41 of the Code of Federal Regulations, chapters 300 through 304.

GSA's OGP continually reviews and adjusts policies and regulations under its purview to address Government relocation needs and to incorporate best practices, where appropriate, as a part of its ongoing mission to provide policies for travel by Federal civilian employees and others authorized to travel at Government expense.

Pursuant to 5 U.S.C. 5724a(f) and 5737(a)(6), an employee transferred in the interest of the Government from one official station to another, assigned to a TCS location, or who has completed a TCS assignment and returned to their

previous official station is authorized a relocation MEA.

The purpose of the relocation MEA is to defray some of the costs incurred due to relocating. The allowance is related to expenses that are common to living quarters, such as fees for disconnecting and connecting appliances; cutting and fitting rugs, draperies, and curtains moved from one residence to another; utility fees or deposits that are not offset by eventual refunds; forfeiture of medical, dental, and other non-transferrable contracts; and the cost of changing automobile registration(s) and driver's licenses.

The FTR provides that a relocation MEA may be paid using one of two methods: lump sum or actual expense. Under the lump sum method, the agency pays a lump sum amount without requiring employee documentation of expenses. Under the current regulatory language, the lump sum amounts are “either \$650 or the equivalent of one week's basic gross pay, whichever is the lesser amount” for an employee without immediate family members relocating with them, and “\$1300 or the equivalent of two weeks' basic gross pay, whichever is the lesser amount” for an employee with immediate family members relocating with them.

Under the actual expense method, the agency may authorize the employee to claim actual costs depending on the type of expenses incurred, in an amount in excess of the prescribed lump sum amount. The employee justifies any actual expenses by itemizing with supporting documentation. Reimbursement is limited to one or two weeks' basic gross pay depending on whether or not the employee has an immediate family relocating with them, not to exceed the maximum rate payable for a position at GS-13, Step 10, of the General Schedule (base) (see 5 U.S.C. 5332).

The proposed rule would amend the FTR by removing the relocation MEA lump sum amounts from the FTR and directing readers to an FTR bulletin with the relocation MEA lump sum amounts. GSA would publish the initial FTR bulletin with the relocation MEA lump sum amounts prior to the final rule effective date. Agencies are advised that the relocation MEA lump sum amounts are expected to increase since they were last updated in 2011. Moving forward, GSA will publish FTR bulletins to update the relocation MEA lump sum amounts, as needed, based on changes to the Consumer Price Index. The proposed rule would also clarify in the regulatory text that “basic gross pay”, as referenced in FTR part 302-16,

does not include “locality pay.” See 5 U.S.C. 5302 and 5304.

This proposed rule would also update and clarify the relocation MEA sections in the FTR and rearrange them into a more sequential order, to include replacing the table at FTR 302–16.2 with an updated list of examples for which the relocation MEA may be authorized, and updating the list of examples for which the relocation MEA may not be authorized. It would also remove the relocation MEA employee eligibility table at FTR 302–16.3 and reformat it as an employee eligibility listing.

B. Regulatory Impact Analysis

The following section is a list of activities related to the regulatory compliance that GSA anticipates will occur during the first and subsequent years after publication of the final rule. GSA estimates this cost by multiplying the time required to conduct these activities (publication of a proposed rule, final rule, FTR bulletin, and increase in the relocation MEA lump sum amounts) by the estimated (rounded) compensation. GSA calculates the estimated hourly compensation using the U.S. Office of Personnel Management’s 2023 General Schedule (GS) Rest of United States Locality Pay Table, the full fringe benefit cost factor of 36.25 percent,¹ and a 12 percent² overhead factor to arrive at an overall adjustment factor of 52.6 percent.

1. Government Costs

GSA estimated the total cost each year to issue a FTR bulletin with the new relocation MEA lump sum amount, based on the number of GSA full-time employees (FTEs), the average hourly rate for each grade level, and the number of hours to draft the FTR bulletin by program managers, hours to review by General Counsel, and hours to review and approve by senior management.

GSA estimates it will take 8 GSA employees on average, with a GS–14 step 5 with an average hourly rate of \$96.45/hour, 1 hour each in year 1 to draft the initial FTR bulletin with the relocation MEA lump sum amount. Therefore, GSA estimates the total estimated cost for this part of the rule to be \$772 ($= 8 \times \96.45 GS–14 step 5 rate $\times 1$ hour).

GSA estimates it will take 1 GSA employee on average, with a GS–15 step

5 with an average hourly rate of \$113.46/hour, 1 hour in year 1 to review the initial FTR bulletin with the relocation MEA lump sum amount. Therefore, GSA estimates the total estimated cost for this part of the rule to be \$113 ($= 1 \times \113.46 GS–15 step 5 rate $\times 1$ hour).

GSA estimates it will take 1 GSA General Counsel staff on average, with a SES Level 3 with an average hourly rate of \$142.59/hour, 1 hour in year 1 to review the initial FTR bulletin with the relocation MEA lump sum amount. Therefore, GSA estimates the total estimated cost for this part of the rule to be \$143 ($= 1 \times \142.59 SES Level 3 rate $\times 1$ hour).

Therefore, GSA estimates the total estimated cost for this part of the rule to be \$1,027 for the initial FTR bulletin and each additional year a FTR bulletin is issued for new lump sum amounts ($\$1,027 \times 10$ years $= \$10,270$).

A relocation MEA is a mandatory relocation entitlement to those current employees that transfer from one official duty station to another. Agencies are advised that the relocation MEA lump sum amounts are expected to increase since they were last updated in 2011. Therefore, after publication of the final rule, GSA will publish a FTR bulletin to change the relocation MEA lump sum amounts, with projected increases, from \$650 to \$750 for an employee without immediate family members relocating with them and from \$1,300 to \$1,500 for an employee with immediate family members relocating with them.

GSA requires Federal agencies to track general relocation data regarding entitlements but not the specific data regarding types of expenses authorized within the relocation entitlement category. GSA used data from the Business Travel and Relocation Dashboard, which only accounts for the overall MEA claims and does not differentiate between the types of MEA or if MEA is authorized for a single employee or an employee with family members, to calculate average annual relocation MEA costs per claim across Federal agencies from fiscal year 2018 to fiscal year 2022.

GSA calculates the average relocation MEA lump sum amount between the employees without immediate family members and employees with immediate family members amounts to be \$1,125 ($= \$750 + \$1,500/2$).

GSA assumes the average relocation MEA lump sum amount across Federal agencies will increase to \$1,125. GSA multiplied the difference between \$1,125 and the average annual relocation MEA cost per claim for those Federal agencies with an average annual

MEA cost per claim less than \$1,125 by the number of average annual MEA claims for the respective Federal agency.

Therefore, assuming the number of relocation transfers entitled to MEA on average will stay consistent, with the current overall agency average at less than the current rate of \$1,300, and an increase in the MEA lump sum rate, for years 1 through 10, GSA estimates the total overall increase in associated transfer payments to be \$312,973 each year for years 1 through 10 ($\$312,973 \times 10$ years $= \$3,129,730$).

1. Government Savings

GSA estimated the total cost it will no longer be required to take to issue a FTR proposed rule and final rule with new relocation MEA lump sum amount, based on the number of GSA full time employees (FTEs), the average hourly rate for each grade level, and the number of hours to draft the FTR proposed and final rule by program managers, hours reviewed by General Counsel, and hours to review and approve by senior management.

GSA estimates it will no longer take 3 GSA employees on average, with a GS–14 step 5 with an average hourly rate of \$96.45/hour, 8 hours each in year 1 to draft a proposed rule for relocation MEA lump sum changes. Therefore, GSA estimates the total estimated cost savings for this part of the rule to be \$2,315 ($= 3 \times \96.45 GS–14 step 5 rate $\times 8$ hours).

GSA estimates it will no longer take 3 GSA employees on average, with a GS–15 step 5 with an average hourly rate of \$113.46/hour, 8 hours each in year 1 to review a proposed rule for relocation MEA lump sum changes. Therefore, GSA estimates the total estimated cost savings for this part of the rule to be \$2,723 ($= 3 \times \113.46 GS–15 step 5 rate $\times 8$ hours).

GSA estimates it will no longer take 4 GSA General Counsel staff on average, with a SES Level 3 with an average hourly rate of \$142.59/hour, 8 hours each in year 1 to review a proposed rule for relocation MEA lump sum changes. Therefore, GSA estimates the total estimated cost savings for this part of the rule to be \$4,563 ($= 4 \times \142.59 SES Level 3 rate $\times 8$ hours).

These estimated costs do not account for other agencies who review the rules prior to publication in the **Federal Register**. Therefore, GSA estimates the total estimated cost savings for this part of the rule by not issuing a proposed and final rule to increase the relocation MEA lump sum amounts to be \$8,572.

¹ General Schedule (opm.gov), OMB Memo M–08–13, dated March 11, 2008, and Computing Hourly Rates of Pay Using the 2,087-Hour Divisor (opm.gov).

² See Attachment C of OMB Circular A–76 Revised, dated May 29, 2003.

1. Total Government Net Impact

The total undiscounted estimated Government costs of drafting a FTR bulletin and eliminating drafting a proposed and final rule is \$1,698 over a 10-year period. The total undiscounted estimated associated transfer payments, assuming the number of relocation transfers entitled to MEA on average will stay consistent, the current overall agency average is less than the current rate of \$1,300, and the increase in the MEA lump sum rate, is \$3,129,730 over a 10-year period. The total present value estimated Government costs calculated for a 10-year time horizon at 3 percent is \$438 and at 7 percent is –\$798. The total discounted estimated associated transfer payments calculated for a 10-year horizon at 3 percent is \$2,328,813 and at 7 percent is \$1,590,996.

II. Executive Orders 12866, and 13563, and 14904

Executive Orders (E.O.s) 12866 (Regulatory Planning and Review) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined 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.

III. Regulatory Flexibility Act

GSA does not expect this proposed rule 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, *et seq.*, because it applies only to Federal agencies and employees. Therefore, an Initial Regulatory Flexibility Analysis was not performed.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or

the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 41 CFR Part 302–16

Government employees, Travel and Transportation expenses.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

■ For reasons set forth in the preamble, GSA proposes to revise 41 CFR part 302–16 as set forth below:

PART 302–16—ALLOWANCE FOR MISCELLANEOUS EXPENSES

Subpart A—General Rules

Sec.

302–16.1 What is the purpose of the miscellaneous expenses allowance (MEA)?

302–16.2 Who is and who is not eligible for a MEA?

302–16.3 Must my agency authorize payment of a MEA?

302–16.4 How will I receive the MEA?

302–16.5 May I receive an advance of funds for MEA?

302–16.6 What amount may my agency reimburse me for miscellaneous expenses?

302–16.7 May I claim an amount in excess of that prescribed in this part?

302–16.8 What are examples of types of costs covered by the MEA?

302–16.9 What are examples of types of cost not covered by the MEA?

302–16.10 What standard of care must I use in incurring miscellaneous expenses?

Subpart B—Agency Responsibilities

302–16.100 What governing policies must we establish for MEA?

302–16.101 How should we administer the authorization and payment of miscellaneous expenses?

302–16.102 Are there any restrictions to the types of costs we may cover?

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—General Rules

Note to subpart A: Use of pronouns “I,” “you,” and their variants throughout this subpart refers to the employee, unless otherwise noted.

§ 302–16.1 What is the purpose of the miscellaneous expenses allowance (MEA)?

The miscellaneous expenses allowance (MEA) is intended to help defray various costs incurred due to relocation, assignment to a temporary official station (TCS), and return to the previous official station upon completion of a TCS assignment.

§ 302–16.2 Who is and who is not eligible for a MEA?

(a) You are eligible for a MEA if:

- (1) Your agency authorized or approved a transfer or a TCS;
- (2) You discontinued and established a residence in connection with your transfer or TCS;
- (3) You meet the applicable eligibility conditions in part 302–1 of this chapter; and
- (4) You signed a required service agreement in part 302–2 of this chapter, if transferred.

(b) You are not eligible for a MEA if you are:

- (1) A new appointee;
- (2) A Senior Executive Service (SES) employee authorized “last move home” benefits upon separation from Government service;
- (3) Assigned under the Government Employees Training Act (5 U.S.C. 4109);
- (4) Returning from an OCONUS official station to place of actual residence for separation from Government service; or
- (5) Returning from an OCONUS official station to a new CONUS official station if relocation expenses have not been authorized to the new CONUS official station.

§ 302–16.3 Must my agency authorize payment of a MEA?

Yes, if you meet the applicable eligibility conditions in § 302–16.2, your agency must authorize payment of a MEA.

§ 302–16.4 How will I receive the MEA?

You will be reimbursed your MEA in accordance with your agency’s internal relocation policy.

§ 302–16.5 May I receive an advance of funds for MEA?

No, your agency may not authorize an advance of funds for MEA. MEA may be paid after you have transferred to the new official station, upon assignment to your TCS, or upon completion of your TCS and return to your previous official station, as applicable.

§ 302–16.6 What amount may my agency reimburse me for miscellaneous expenses?

The following amounts will be paid for miscellaneous expenses without support or documentation of expenses:

- (a) Either a lump sum amount set in an FTR bulletin or the equivalent of one week’s basic gross pay, whichever is the lesser amount, if you have no immediate family relocating with you; or
- (b) Either a lump sum amount set in an FTR bulletin or the equivalent of two weeks’ basic gross pay, whichever is the lesser amount, if you have immediate family relocating with you.

Note 1 to § 302–16.6: GSA publishes the lump sum amounts in an FTR bulletin on an intermittent basis at <https://gsa.gov/ftrbulletins>.

§ 302–16.7 May I claim an amount in excess of that prescribed in this part?

Yes, you may claim an amount in excess of that prescribed in § 302–16.6 if authorized by your agency; and

(a) Supported by acceptable statements of fact, paid bills or other acceptable evidence (documentation) justifying the amounts claimed; and
(b) The aggregate amount does not exceed your basic gross pay (at the time you reported for duty, at your new official station) for:

(1) One week if you are relocating without an immediate family; or
(2) Two weeks if you are relocating with an immediate family.

(c) The amount authorized cannot exceed the maximum rate of grade GS–13, Step 10 General Schedule (base) salary (excluding locality pay) (see 5 U.S.C. 5332) at the time you reported for duty at your new official station.

§ 302–16.8 What are examples of types of costs covered by the MEA?

Miscellaneous expenses are costs associated with relocating that are not covered by other relocation benefits detailed in chapter 302. Expenses allowable include but are not limited to the following, and similar, items:

(a) Fees for disconnecting and connecting utilities (such as gas, water, electricity), appliances, equipment (such as a security system or electric vehicle charging station), or conversion of appliances for operation on available utilities;

(b) Fees for cutting and fitting rugs, draperies, and curtains when they are moved from one residence to another;

(c) Deposits or fees for utilities not offset by eventual refunds;

(d) Losses that cannot be recovered by transfer or refund and are incurred due to early termination of a contract (*e.g.*, medical, dental, private institutional care for immediate family members with disabilities, nonrefundable education enrollment fee, real estate expenses connected with the cancellation of a contract when the agency prevented the employee from completing a purchase of a residence due to a new transfer);

(e) Automobile registration, driver's license, and use taxes imposed when initially bringing privately-owned vehicles (POVs) into certain jurisdictions;

(f) Reinstalling or removing automobile parts upon vehicle reentry into the United States or entry into a foreign country, when removal or

installation of those automobile parts was required by host country law;

(g) Post office box rental fee when rented to provide a constant mailing address between the time an employee departs the old residence and occupies a residence at the new official station;

(h) Rental agent fees customarily charged for securing housing in foreign countries;

(i) Reassembly, set up, and tuning of a piano moved for relocation;

(j) Pet care (for cats and dogs only), child care, or adult care for dependent parents or other adult dependents incapable of self-care at home while the employee or spouse are away on a househunting trip, or are packing or unpacking;

(k) Rental car fees while awaiting a delayed POV shipment to or from OCONUS if the transportation service provider (TSP) has not arranged for the employee's use of a rental car at TSP expense. Reimbursement may be authorized starting after the shipping company designated delivery date, shall not exceed 10 days, and does not include the days after the POV is delivered or a new POV is purchased at location. The rental car for the employee and immediate family members must be the same or comparable size or model as the POV the employee shipped;

(l) Transportation and quarantine of pets (cats and dogs only). Costs normally associated with the transportation, quarantine fees, and handling of dogs and cats. This includes pet-related costs due to air carrier rules or imposed by the law of the jurisdiction of the employee's new residence as an integral part of the process of admissions and licensing;

(m) Professional relicensing fees required by the new official station that are directly related to the employee's occupation, such as fees required to take the bar exam or teaching certification; and professional relicensing fees or business costs (including exam, continuing education courses, business license, permit, and registration fees) that are directly related to the immediate family member's occupation, when the immediate family member was licensed or certified in a profession, or owned a business, at the employee's previous official station and is required to secure or maintain a new professional license or certification, or business license or permit, to engage in that profession in a new jurisdiction because of unique licensing or certification requirements and authorities; or

(n) Specialized shipment of hazardous materials, such as lithium batteries, when Federal, state, local, and foreign country laws or carrier regulations

prohibit commercial shipment of certain articles not included as part of household goods, which cannot be otherwise transported to the new official station because of shipping and transportation restrictions.

§ 302–16.9 What are examples of types of costs not covered by the MEA?

Examples of costs that are not reimbursable from the MEA are:

(a) Losses in selling or buying real and personal property and costs related to such transactions;

(b) Cost of additional insurance on household goods while in transit to the new official station or cost of loss or damage to such property;

(c) Additional costs of moving household goods caused by exceeding the maximum weight limitation;

(d) Costs of newly acquired items, such as the purchase or installation cost of new rugs or draperies;

(e) Higher income, real estate, sales, or other taxes as the result of establishing residence in the new locality;

(f) Fines imposed for traffic infractions while en route to the new official station locality;

(g) Accident insurance premiums or liability costs incurred in connection with travel to the new official station locality, or any other liability imposed upon the employee for uninsured damages caused by accidents for which the employee or their immediate family is held responsible;

(h) Losses as the result of sale or disposal of items of personal property (such as lithium batteries, gasoline, and natural gas) not considered convenient or practicable to move;

(i) Damage or loss of clothing, luggage, or other personal effects while traveling to the new official station locality;

(j) Subsistence, transportation, or mileage expenses in excess of the amounts reimbursed as per diem or other allowances under this regulation;

(k) Medical expenses due to illness or injuries while en route to the new official station or while living in temporary quarters at Government expense under the provisions of this chapter;

(l) Costs incurred in conjunction with structural alterations (such as remodeling or modernizing of living quarters, garages or other buildings to accommodate privately-owned automobiles, appliances or equipment [*e.g.*, a security system or electric vehicle charging station]); or replacing or repairing worn-out or defective appliances, or equipment shipped to the new location;

(m) Costs incurred in connection with preparing a residence for sale or

purchase (e.g., maintenance, repairs, cleaning);

(n) Delivery charges or costs associated with newly-acquired items (such as appliances, security systems, locksmith service, or new vehicle) at the new official station for reasons of personal taste or preference and not required because of the relocation;

(o) Costs unrelated to the quarantine, transportation, and handling of pets. Additional costs for lodging for a second room or boarding fees, micro-chipping, veterinary expenses (e.g., inoculations, examinations, medical care and certification fees), routine care and grooming of pets, and purchases of crates and tags for the pets. Expenses for other animals (horses, fish, birds, reptiles, rodents, etc.) are not authorized because of their size, exotic nature, restrictions on shipping, host country restrictions, and special handling difficulties; or

(p) Costs related to obtaining a visa, passport, immigration green card, birth certificate or other acceptable evidence of birth when required for official travel to foreign locations; charges for immunization, inoculations, other disease-preventative medical prophylaxis, including disease testing, that are required for official travel if not obtained through the agency. The expenses in this paragraph may be reimbursable as part of the employee's relocation en route travel miscellaneous expenses as specified in § 301–12.1 of this chapter.

§ 302–16.10 What standard of care must I use in incurring miscellaneous expenses?

You must exercise the same care in incurring expenses that a prudent person would exercise if relocating at personal expense.

Subpart B—Agency Responsibilities

Note to subpart B: Use of pronouns “we,” “you,” and their variants throughout this subpart refers to the agency.

§ 302–16.100 What governing policies must we establish for MEA?

For MEAs, you must establish policies and procedures governing:

(a) Who will determine whether payment for an amount in excess of the lump sum MEA is appropriate; and

(b) How you will pay a MEA in accordance with §§ 302–16.2 and 302–16.3.

§ 302–16.101 How should we administer the authorization and payment of miscellaneous expenses?

You should limit payment of miscellaneous expenses to only those expenses that are necessary.

§ 302–16.102 Are there any restrictions to the types of costs we may cover?

Yes, a MEA cannot be used to reimburse:

(a) Costs or expenses incurred which exceed maximums provided by statute or in this subtitle;

(b) Costs or expenses incurred but which are disallowed elsewhere in this subtitle;

(c) Costs reimbursed under other provisions of law or regulations;

(d) Costs or expenses incurred for reasons of personal taste or preference and not required because of the move;

(e) Losses covered by insurance;

(f) Fines or other penalties imposed upon the employee or members of their immediate family;

(g) Judgments, court costs, and similar expenses growing out of civil actions; or

(h) Any other expenses brought about by circumstances, factors, or actions in which the move to a new official station was not the proximate cause.

[FR Doc. 2024–01214 Filed 1–22–24; 8:45 am]

BILLING CODE 6820–14–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 701, 702, 704, 705, 706, 715, 719, 725, 731, 742, 750, and 752

RIN 0412–AA88

U.S. Agency for International Development Acquisition Regulation; Administrative Updates

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) seeks public comment on a proposed rule that would revise the Agency for International Development Acquisition Regulation (AIDAR) to maintain consistency with Federal and Agency regulations, remove obsolete material and internal Agency procedures, and make editorial amendments to better clarify the regulation.

DATES: Comments must be received no later than February 22, 2024.

ADDRESSES: Submit comments, identified by the title of the action and Regulatory Information Number (RIN) through the Federal eRulemaking Portal at <https://www.regulations.gov> by following the instructions for submitting comments. Please include your name, company name (if any), and “0412–AA88” on any attachments. 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.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202–916–2622 or Email: policymailbox@usaid.gov.

SUPPLEMENTARY INFORMATION:

A. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (12 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of the proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note). In summary: “USAID seeks public comment on a proposed rule that would revise the AIDAR to maintain consistency with Federal and Agency regulations, remove obsolete material and internal Agency procedures, and make editorial amendments to better clarify the regulation. For detailed information on these revisions, please see a final rule with the same RIN and title.”

The proposal, including the summary provided herein, can be found at <https://www.regulations.gov>.

B. Additional Information

USAID is publishing in the “Rules and Regulations” section of this **Federal Register** a final rule with the same title that identifies administrative and editorial revisions to the AIDAR. USAID is publishing these changes in the direct final rule because the Agency views it as a conforming and administrative amendment and does not anticipate any adverse comments. A detailed discussion of revisions proposed to the AIDAR is set forth in the preamble of the direct final rule.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule.

If significant adverse comment(s) are received on the direct final rule, USAID will publish a timely withdrawal in the **Federal Register** informing the public changes to what AIDAR part(s) or subpart(s), as announced in the direct final rule, will not take effect. Any portions of the final rule for which no significant adverse comment is received will become final after the designated period. All public comments received on the direct final rule will be addressed in a subsequent final rule based on this proposed rule. USAID will not institute

a second comment period. Any parties interested in commenting on this action should do so at this time.

C. Instructions

All comments must be in writing and submitted through one of the methods specified in the Addresses section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in

the text of the message. Please note, however, that because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington, USAID recommends sending all comments to the Federal eRulemaking Portal.

All comments received will be posted without change to the Federal eRulemaking Portal including any personal information provided.

As noted above, in the “Rules and Regulations” section of this **Federal**

Register, USAID is publishing a direct final rule with the same title that announces revisions to the Agency for International Development Acquisition Regulation (AIDAR). For detailed information on these revisions, please see the direct final rule.

Deborah Broderick,

Acting Chief Acquisition Officer.

[FR Doc. 2023–27952 Filed 1–22–24; 8:45 am]

BILLING CODE 6116–01–P

Notices

Federal Register

Vol. 89, No. 15

Tuesday, January 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.

AMERICAN BATTLE MONUMENTS COMMISSION

Performance Review Board Appointments

AGENCY: American Battle Monuments Commission.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the American Battle Monuments Commission Performance Review Board. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978.

DATES: These appointments are effective as of 01 October 2023.

FOR FURTHER INFORMATION CONTACT: Jamilyn Smyser, Chief of Human Resources and Administration, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia 22201. Telephone number: (703) 584-1552

American Battle Monument Commission SES Performance Review Board—2022/2023

Dr. Erin Mahan, Chief Historian, Office of the Secretary of Defense

Mr. Mark Averill, Deputy Administrative Assistant to the Secretary of the Army

Michael Conley, Chief of Staff, American Battle Monuments Commission

Kelly Dove,

Chief, Human Resources and Administration.

[FR Doc. 2024-01256 Filed 1-22-24; 8:45 am]

BILLING CODE 6120-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-5-2024]

Foreign-Trade Zone 116; Application for Expansion of Subzone 116F; Port Arthur LNG, LLC; Port Arthur and Jefferson County, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, requesting an expansion of Subzone 116F on behalf of Port Arthur LNG, LLC. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on January 18, 2024.

The applicant is requesting authority to expand Subzone 116F to include a new site located at 3750 South Gulfway Drive in Port Arthur (Site 3, 25.089 acres). No additional authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is March 4, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 18, 2024.

A copy of the application will be available for public inspection in the "Online FTZ Information Section" section of the FTZ Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Camille Evans at Camille.Evans@trade.gov.

Dated: January 18, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024-01236 Filed 1-22-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-484-803]

Large Diameter Welded Pipe From Greece: Rescission of Antidumping Duty Administrative Review: 2022-2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on large diameter welded pipe (LDWP) from Greece for the period of review (POR) May 1, 2022, through April 30, 2023.

DATES: Applicable January 23, 2024.

FOR FURTHER INFORMATION CONTACT: Taylor Hatley, 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.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order on LDWP from Greece.¹ On May 30, 2023, the American Line Pipe Producers Association Trade Committee (the petitioner) submitted a timely request that Commerce conduct an administrative review.²

On July 12, 2023, Commerce published in the **Federal Register** a notice of initiation of administrative review with respect to imports of LDWP from Greece exported and/or produced by Corinth Pipeworks Pipe Industry S.A. (Corinth), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i).³ On July 14, 2023, we placed on the record U.S. Customs and Border Protection (CBP) data for entries

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 27445 (May 2, 2023).

² See Petitioner's Letter, "Request for Administrative Review," dated May 30, 2023.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 44262 (July 12, 2023).

of LDWP from Greece during the POR, showing no reviewable POR entries and invited interested parties to comment.⁴

On July 21, 2023, the petitioner filed comments with respect to the CBP data.⁵ On July 24, 2023, Corinth submitted a no-shipment certification, indicating that it had no exports or sales of subject merchandise to the United States during the POR.⁶ On July 25, 2023, Commerce issued a no-shipment inquiry to CBP.⁷ On August 14, 2023, CBP responded that it had no record of any entries of subject merchandise during the POR.⁸ On October 20, 2023, the petitioner requested that Commerce conduct verification.⁹ On October 30, 2023, Corinth requested that Commerce rescind the administrative review.¹⁰

On January 3, 2024, Commerce notified all interested parties of its intent to rescind the instant review in whole because there were no reviewable, suspended entries of subject merchandise by Corinth,¹¹ the sole company subject to this review during the POR, and invited interested parties to comment.¹² On January 10, 2024, Corinth submitted comments in support of Commerce's intent to rescind the instant review in whole.¹³

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an AD order when there are no reviewable entries of

subject merchandise during the POR for which liquidation is suspended.¹⁴ Normally, upon completion of an administrative review, the suspended entries are liquidated at the AD assessment rate calculated for the review period.¹⁵ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the AD assessment rate calculated for the review period.¹⁶ As noted above, there were no entries of subject merchandise for Corinth, the sole company subject to this review during the POR. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are hereby rescinding this administrative review, in its entirety, in accordance with 19 CFR 351.213(d)(3).

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of 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). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

⁴ See Memorandum, "Release of Customs and Border Protection Data," dated July 14, 2023.

⁵ See Petitioner's Letter, "Comments on U.S. Customs and Border Protection Entry Data," dated July 21, 2023 (Petitioner's CBP data Comments).

⁶ See Corinth's Letter, "No Shipment Certification of CPW," dated July 24, 2023.

⁷ See CBP Message 3206404, "No Shipment Inquiry," dated July 25, 2023.

⁸ See Memorandum, "No Shipment Inquiry Results," dated August 14, 2023.

⁹ See Petitioner's Letter, "Request for Verification," dated October 20, 2023.

¹⁰ See Corinth's Letter, "Request for Rescission of Administrative Review," dated October 30, 2023.

¹¹ Commerce does not consider non-CBP information to identify entries of subject merchandise because this information is generally not as reliable as information obtained from CBP. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2020–2021*, 87 FR 55996 (September 13, 2022), and accompanying Issues and Decision Memorandum at 5. Based on our examination of record evidence, we find that the information submitted in the petitioner's CBP Data Comments does not demonstrate that Corinth exported subject merchandise to the United States during the POR or otherwise undermine the results of the CBP data query or the certified statement by Corinth that it had no entries of subject merchandise during the POR.

¹² See Commerce's Letter, "Notice of Intent to Rescind Review," dated January 3, 2024.

¹³ See Corinth's Letter, "Comments of Notice of Intent to Rescind Review," dated January 10, 2024.

¹⁴ See, e.g., *Dioctyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4154 (January 24, 2023).

¹⁵ See 19 CFR 351.212(b)(1).

¹⁶ See 19 CFR 351.213(d)(3).

Dated: January 17, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–01149 Filed 1–22–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–859]

Light-Walled Rectangular Pipe and Tube From the Republic of Korea: Rescission of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on light-walled rectangular pipe and tube (LWRPT) from the Republic of Korea (Korea) for the period of review (POR) August 1, 2022, through July 31, 2023.

DATES: Applicable January 23, 2024.

FOR FURTHER INFORMATION CONTACT: Carolyn Adie, 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) 482–6250.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2008, Commerce published in the **Federal Register** an AD order on LWRPT from Korea.¹ On August 2, 2023, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On October 18, 2023, based on a timely request for an administrative review, Commerce initiated this administrative review with respect to one company, Hoa Phat Steel Pipe Company Limited (Hoa Phat).³

On November 15, 2023, Hoa Phat submitted a letter notifying Commerce that it had no exports, sales, or entries

¹ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less than Fair Value*, 73 FR 45403 (August 5, 2008) (LWRPT from Korea Order, or 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 50840 (August 2, 2023).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829, 71831 (October 18, 2023).

during the POR, and requesting that Commerce rescind this administrative review.⁴ On November 30, 2023, we placed on the record the results of a data query from U.S. Customs and Border Protection (CBP) indicating no suspended entries during the POR attributed to Hoa Phat.⁵ No interested party submitted comments to Commerce.

On December 11, 2023, Commerce notified all interested parties of its intent to rescind the review in full because there were no suspended entries by the company subject to this review during the POR and invited interested parties to comment on Commerce's intent to rescind.⁶ No interested parties commented on the Intend to Rescind Memorandum.

Interested-Party Comment

In Hoa Phat's No Shipment Letter, Hoa Phat argues that none of the entries of LWRPT manufactured by Hoa Phat are included in the scope of this administrative review because all of the hot-rolled steel (HRS) used to produce the LWRPT that Hoa Phat exported to the United States that entered U.S. customs territory on or after August 4, 2022 was produced in Vietnam, not Korea.⁷ Hoa Phat contends that it requested an administrative review here so that Commerce could determine whether any of Hoa Phat's exports were, in fact, subject to the Order.⁸ Hoa Phat argues that Commerce should find that none of the exports by Hoa Phat during this period of review were produced with HRS from the People's Republic of China (China), Korea, or Taiwan.⁹ Hoa Phat additionally argues that Commerce should find that Hoa Phat and its customers are entitled to certify the origin of the HRS in the LWRPT exported to the United States by Hoa Phat.¹⁰

In *LWRPT Circumvention Final*, we stated that, “{b}ecause entries of LWRPT produced or exported by Hoa Phat currently must be entered as subject to the cash deposit rates established under the *LWRPT China Orders* pursuant to Commerce's {preliminary determination}, Hoa Phat, or any other interested party with

standing to request a review of Hoa Phat's entries may request an administrative review of its entries under the *LWRPT China Orders*.”¹¹ Thus, the proper venue for Commerce to reconsider Hoa Phat's certification eligibility is in the context of administrative reviews of the *LWRPT China Orders*. In fact, Commerce initiated an administrative review of Hoa Phat in each of the *LWRPT China Orders*.¹²

Accordingly, we are rescinding this review because there are no suspended entries during the POR for the company for which this review has been initiated. Further, pursuant to the *LWRPT Circumvention Final*, no entry of LWRPT produced by Hoa Phat in Vietnam would be entered subject to the *LWRPT from Korea Order* without the completion of administrative reviews under the *LWRPT China Orders*. Hoa Phat's eligibility to certify will be determined in the context of the *LWRPT China Orders* administrative reviews.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an AD order when there are no suspended entries during the POR for the companies for which the review was initiated.¹³ Normally, upon completion of an administrative review, the suspended entries are liquidated at the AD assessment rate calculated for the POR.¹⁴ Therefore, for an administrative review to be conducted, there must be at least one suspended entry for which Commerce can instruct CBP to liquidate at the AD assessment rate calculated for the POR.¹⁵ As noted above, there were

no suspended entries for the company subject to this review during the POR. Accordingly, in the absence of suspended entries during the POR, we are hereby rescinding this administrative review, in its entirety, in accordance with 19 CFR 351.213(d)(3).

Assessment

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 of 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). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 17, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–01148 Filed 1–22–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD661]

Research Track Assessment for Applied State Space Modeling

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Research Track Assessment Peer Review

⁴ See Hoa Phat's Letter, “No Shipment Letter,” dated November 15, 2023 (Hoa Phat's No Shipment Letter).

⁵ See Memorandum, “Placement on the Record of Results of Inquiry to U.S. Customs and Border Protection,” dated November 30, 2023.

⁶ See Memorandum, “Intent to Rescind Review,” dated December 11, 2023.

⁷ See Hoa Phat's No Shipment Letter at 2.

⁸ *Id.* at 1–2.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ See *Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 88 FR 77266 (November 9, 2023) (*LWRPT Circumvention Final*), and accompanying IDM at Comment 5 (citing *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less than Fair Value*, 73 FR 45403 (August 5, 2008); and *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Countervailing Duty Order*, 73 FR 45405 (August 5, 2008) (collectively, *LWRPT China Orders*)).

¹² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829, 71835, 71837 (October 18, 2023).

¹³ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

¹⁴ See 19 CFR 351.212(b)(1).

¹⁵ See 19 CFR 351.213(d)(3).

Meeting for the purpose of reviewing Applied State Space Modeling. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting results to assessment scientists and fisheries managers. Materials are prepared by the research track working group and reviewed by an independent panel of stock assessment experts from the Center of Independent Experts. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the process.

DATES: The public portion of the Research Track Assessment Peer Review Meeting will be held from February 12, 2024, through February 15, 2024. The

meeting will conclude on February 15, 2024, at 4 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held in person and virtually. The in person meeting will be held in the S.H. Clark Conference Room in the Aquarium Building of the National Marine Fisheries Service, Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, MA 02543 and virtually using this Google Meet link: <https://meet.google.com/fhd-msfm-pzz>.

FOR FURTHER INFORMATION CONTACT: Michele Traver, 508–495–2195, michele.traver@noaa.gov.

SUPPLEMENTARY INFORMATION: For further information, please visit the

NEFSC website at <https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic>. For additional information about research track assessment peer review, please visit the NEFSC web page at <https://www.fisheries.noaa.gov/event/applied-state-space-modeling-2023-research-track-peer-review>.

Daily Meeting Agenda—Research Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

MONDAY, FEBRUARY 12, 2024

Time	Topic	Presenter(s)	Notes
9 a.m.–9:15 a.m	Welcome/Logistics Introductions/ Agenda/Conduct of Meeting.	Michele Traver, Assessment Process Lead Kristan Blackhart, Population Dynamics (PopDy) Branch Chief Yong Chen, Panel Chair.	
9:15 a.m.–10 a.m	Introduction/Executive Summary	Tim Miller, Working Group (WG) chair.	Review current use of state-space models in management, WG find- ings and recommendations.
10 a.m.–11 a.m	Terms of Reference (TOR) #5: Gulf of Maine (GOM) haddock.	Charles Perretti	Working Paper (WP) 5.1: Simple transition from Age-Structured As- sessment Program (ASAP) to Woods Hole Assessment Model (WHAM).
11 a.m.–11:15 a.m	Break.		
11:15 a.m.–12:15 p.m	TOR #5: George's Bank (GB) winter flounder.	Alex Hansell	WP 5.2: Simple transition from ASAP to WHAM.
12:15 p.m.–1:15 p.m	Lunch.		
1:15 p.m.–2:15 p.m	TOR #5: Redfish	Brian Linton	WP 5.3: Simple transition from ASAP to WHAM.
2:15 p.m.–3:15 p.m	TOR #5: Mackerel	Kiersten Curti, Alex Hansell	WP 5.4: Simple transition from ASAP to WHAM.
3:15 p.m.–3:30 p.m	Break.		
3:30 p.m.–4 p.m	Discussion/Summary	Review Panel.	
4 p.m.–4:15 p.m	Public Comment	Public.	
4:15 p.m	Adjourn.		

TUESDAY, FEBRUARY 13, 2024

Time	Topic	Presenter(s)	Notes
9 a.m.–9:05 a.m	Welcome/Logistics/Agenda	Michele Traver, Assessment Process Lead; Yong Chen, Panel Chair.	
9:05 a.m.–10:45 a.m	TOR #1	Tim Miller (WG Chair)	Miller <i>et al.</i> WP1.
10:45 a.m.–11 a.m	Break.		
11 a.m.–12 p.m	TOR #1	Cheng Li	Li <i>et al.</i> WP.
12 p.m.–1 p.m	Lunch.		
1 p.m.–1:30 p.m	Discussion/Summary	Review Panel.	
1:30 p.m.–2:30 p.m	TOR #2	Tim Miller (WG Chair)	Miller <i>et al.</i> WP1.
2:30 p.m.–2:45 p.m	Break.		
2:45 p.m.–3:45 p.m	TOR #2	Greg Britten, Liz Brooks	Britten <i>et al.</i> WP.
3:45 p.m.–4 p.m	Public Comment.		
4 p.m.–4:30 p.m	Discussion/Review/Summary	Review Panel.	
4:30 p.m	Adjourn.		

WEDNESDAY, FEBRUARY 14, 2024

Time	Topic	Presenter(s)	Notes
9 a.m.–9:05 a.m	Welcome/Logistics/Agenda	Michele Traver, Assessment Process Lead; Yong Chen, Panel Chair.	
9:05 a.m.–10:15 a.m	TOR #3: Environmental effects on recruitment.	Greg Britten, Liz Brooks	Miller <i>et al.</i> WP2.
10:15 a.m.–10:30 a.m	Break.		
10:30 a.m.–12 p.m	TOR #3: Intro/Environmental effects on natural mortality.	Tim Miller (WG Chair)	Britten <i>et al.</i> WP.
12 p.m.–1 p.m	Lunch.		
1 p.m.–2:30 p.m	TOR #3: Environmental effects on survey catchability.	Amanda Hart, Alex Hansell	Hart <i>et al.</i> WP.
2:30 p.m.–3:15 p.m	TOR #3: Reference points in stochastic populations.	Tim Miller (WG Chair)	Miller WP.
3:15 p.m.–3:30 p.m	Break.		
3:30 p.m.–4 p.m	Discussion/Summary	Review Panel.	
4 p.m.–4:30 p.m	TOR #4	Tim Miller (WG Chair).	
4:30 p.m.–4:45 p.m	Public Comment	Public.	
4:45 p.m.–5:15 p.m	Discussion/Review/Summary	Review Panel.	
5:15 p.m	Adjourn.		

THURSDAY, FEBRUARY 15, 2024

Time	Topic	Presenter(s)	Notes
9 a.m.–9:05 a.m	Logistics	Michele Traver, Assessment Process Lead; Yong Chen, Panel Chair.	
9:05 a.m.–10 a.m	Overview of panel findings	Review Panel.	
10 a.m.–12 p.m	Report writing.		
12 p.m.–1 p.m	Lunch.		
1 p.m.–4 p.m	Report writing.		
4 p.m	Adjourn.		

The meeting is open to the public; however, during the “Report Writing” session on Friday, February 15, 2024, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email (see **FOR FURTHER INFORMATION CONTACT** section).

Dated: January 17, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–01150 Filed 1–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XD665]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off New York, New Jersey, Delaware, and Maryland; Correction

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

ACTION: Notice; correction.

SUMMARY: This notice contains a correction to the Summary of Request section of the notice of proposed incidental harassment authorization (IHA) for the taking of marine mammals incidental to marine site characterization surveys in waters off of New York, New Jersey, Delaware, and Maryland published in the **Federal Register** on January 5, 2024. That notice included an incorrect website address for accessing monitoring results submitted by Atlantic Shores Offshore Wind, LLC under previous IHAs. This notice provides a correction to that

website address; all other information is unchanged.

FOR FURTHER INFORMATION CONTACT:

Alyssa Clevens, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Correction**

In the **Federal Register** of January 5, 2024, in FR Doc. 2024–00008, on page 754, in the third column, correct the sentence in the Summary of Request section to read:

These previous monitoring results are available to the public on our website: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization> and <https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-bight-llc-marine-site>.

Dated: January 18, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–01241 Filed 1–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XD645]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Wreckfish Sub-Committee.

DATES: The Wreckfish Sub-Committee meeting will be held via webinar on February 8, 2024. The meeting will be held from 9 a.m. until 12:30 p.m., EDT.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is required. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meeting at: <https://safmc.net/events/feb-2024-wreckfish-sub-committee-meeting/>.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Christina Wiegand, Fishery Social Scientists, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: christina.wiegand@safmc.net.

SUPPLEMENTARY INFORMATION: The Wreckfish Sub-Committee will discuss Amendment 48 to the Snapper Grouper Fishery Management Plan, select preferred alternatives, and consider approval for public hearings. Current actions under consideration in Amendment 48 include: sector allocations, electronic reporting, fishing season, Individual Transferable Quota (ITQ) participation and eligibility requirements, fishery monitoring requirements, and cost recovery.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aid should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2024–01244 Filed 1–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XD647]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Scientific and Statistical Committee (SSC).

DATES: The SSC meeting will be held via webinar from 9 a.m. until 5 p.m. EST on February 9, 2024.

ADDRESSES: The meeting will be held via webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: The meeting is open to the public via webinar as it occurs. Webinar registration is required. Information regarding webinar registration will be posted to the Council's website at: <https://safmc.net/events/feb-2024-ssc-meeting/> as it becomes available. The meeting agenda, briefing book materials, and online comment form will be posted to the Council's website two weeks prior to the meeting. Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. For this meeting, the deadline for submission of written comment is 5 p.m. EST, February 8, 2024.

The SSC meeting agenda includes the review of the Southeast Data Assessment and Review (SEDAR) 76 Black Sea Bass Operational Assessment; Snapper Grouper Management Strategy Evaluation; Terms of Reference,

schedules, and participant selection for upcoming SEDAR assessments; and discussion of other business as needed. The SSC will provide guidance to staff and make recommendations for Council consideration.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 18, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–01249 Filed 1–22–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XD626]

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of application for exempted fishing permit.

SUMMARY: This notice announces NMFS' receipt of an application and the public comment period for an exempted fishing permit (EFP) from Real Time Data North America, LLC (RTDNA), a private company specializing in software/application development. If issued, this permit would allow the applicant to test methods for its software application to interface with and meet the electronic logbook (ELB) requirements without also meeting the duplicate hard copies recordkeeping and reporting requirement. The objectives of this EFP, if issued, would be to exempt fishery participants from the requirement to print paper logbooks when using a RTDNA ELB, and to test and scale a fully electronic reporting system in partnership with the NMFS Alaska Regional Office. Field testing would be conducted between March 1, 2024 and January 1, 2026. This experiment would have the potential to streamline recordkeeping and reporting requirements and thus promote the objectives of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments on this EFP application must be submitted to NMFS on or before February 12, 2024. The North Pacific Fishery Management Council (Council) will consider the application at its meeting from February 5, 2024 through February 12, 2024.

ADDRESSES: The Council meeting will be held virtually and in person in Seattle, WA. The agenda for the Council meeting is available at <https://www.npfmc.org>. In addition to submitting public comments during the Council meeting through the Council website, you may submit your comments, identified by NOAA–NMFS–2023–0158, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter [NOAA–NMFS–2023–0158] in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). 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, Attn: Records Office. 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), 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 EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available from <https://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT: Amy Hadfield, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) and

GOA under the Fishery Management Plan (FMP) for Groundfish of the BSAI Management Area (BSAI FMP) and the FMP for Groundfish of the GOA (GOA FMP). The Council prepared the BSAI and GOA FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations governing the BSAI and GOA groundfish fisheries appear at parts 600 and 679. The FMPs and the EFP implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

Background and Need for Exempted Fishing Permit

NMFS requires daily fishing logbooks to be completed by most catcher vessels operating under a Federal Fisheries Permit. NMFS logbooks serve as a record of the location and time of fishing gear deployment and retrieval and the harvest and discard of target and non-target species. Logbook data are used to manage fisheries and assist in monitoring compliance with fishery regulations. Most vessel operators currently use paper logbooks to record the required information. However, upon approval of the Regional Administrator, vessel operators may use NMFS-approved electronic versions of the logbook. These systems are called electronic logbooks (ELBs).

Beginning in 2015, NMFS developed, with Council input, the Electronic Technologies Implementation Plan for the Alaska Region to guide integration of monitoring technologies into North Pacific fisheries management and provide goals and benchmarks to evaluate attainment of goals (plan and updates are available at <https://www.fisheries.noaa.gov/national/fisheries-observers/electronic-technologies-implementation-plans>). The plan identified several North Pacific fisheries where electronic logbooks would be beneficial to management.

In 2023, RTDNA was awarded funding by the National Fish and Wildlife Federation to advance the development of electronic logbooks in Alaska’s fishing industry. Throughout the year, RTDNA implemented the Deckhand ELB on 29 vessels as part of a pilot project. This initiative highlighted several regulatory challenges, particularly for smaller vessels. The feedback from vessel operators delivered to both RTDNA and NMFS staff revealed that existing

regulations, initially designed without considering modern technologies like tablets, hinder the transition from paper-based recordkeeping to fully electronic logbooks. This pilot phase underscored the need for regulatory adaptations to accommodate electronic logbook systems.

Current regulations in the Alaska Region mandate daily printing and signatures on board vessels for users of NMFS-approved ELBs in Alaska federal fisheries. These regulations significantly limit the ability and potential for ELB technology to comprehensively benefit fishers and NMFS. NMFS believes the printing and signature requirements should be reconsidered and updated to allow innovation in modern ELB technologies. This requested EFP would exempt fishers from the regulations found in § 679.5(f)(3) and (4) that require fishing vessels to produce printed copies of ELB logsheets, ELB discard reports, and signatures on printed copies. If approved, this EFP would facilitate further research into necessary regulatory changes to integrate electronic logbooks effectively with modern technology.

Exempted Fishing Permit

On October 20, 2023, Mr. Lange Solberg of RTDNA submitted an application for an EFP to develop and test changes in regulations found in § 679.5(f)(3) and § 679.5(f)(4) that require vessels using ELB logbooks to produce printed copies of ELB logsheets, ELB discard reports, and signatures on printed copies. The objectives of this proposed EFP are as follows:

- To test 100 percent electronic submission of logbook and discard reports.
- To evaluate the effectiveness of electronic reporting in improving data accuracy and timeliness.
- To assess the feasibility of transferring data electronically to observers and International Pacific Halibut Commission port samplers.
- To demonstrate the potential for cost savings and efficiency gains through digital processes.
- To explore ways to enhance compliance with fishing regulations via electronic reporting.
- To gather data on the impact of electronic reporting on vessel operations.

Vessel operators participating in this project would utilize the Deckhand ELB platform, which is an iPad with RTDNA’s software application installed, for data collection in halibut and groundfish fisheries in the North Pacific. Vessel operators would provide

access to these devices to authorized personnel on request and test alternate methods to a physical signature. Ideas that are currently under consideration include a digital signature component for validation, using a personal identification number (PIN) for each operator.

Vessel operators would also assist in the testing methods for transferring logbook data to observers, IPHC port samplers and other authorized personnel either directly from the electronic device or via electronic communications. This project aims to improve overall efficiency, provide access to necessary ELB data and enable an end-to-end testing of a fully electronic logbook data collection and submission framework.

Exemptions

Two exemptions are necessary to conduct this project. First, an exemption would be necessary from the requirement at § 679.5(f)(3) for printed copies of ELB logsheets and discard reports on board participating vessels.

The second exemption would be from § 679.5(f)(4)'s requirement for physical signatures on printed ELB logsheets and discard reports on board participating vessels. Physical signatures would be replaced by electronic signatures using PINs.

Permit Conditions, Review, and Effects

The applicant would be required to submit to NMFS a report of the EFP results six months after the close of the 2025 IFQ fishing season. The report would include the method(s) chosen for digital signature and a comparison among methods if applicable; interactions with observers, port samplers and an analysis of both benefits and challenges of transferring required data to them electronically; and an analysis of cost savings, efficiency and impact aboard participating vessels. Under the current regulations, observers and port samplers both collect physical hard copies of the logbooks. Since there would no longer be physical pages under this EFP, best methods for the vessel operator to provide that information electronically must be developed. The activities that would be conducted under this EFP are not expected to have a significant impact on the human environment, as detailed in the categorical exclusion for this action (see **ADDRESSES**).

In accordance with §§ 679.6 and 600.745, NMFS has determined that the application warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council is scheduled

to consider the EFP application during its February 2024 meeting, which will be held in person in Seattle, WA with an option to participate virtually. The EFP application will also be provided to the Council's Scientific and Statistical Committee for review at the February Council meeting. The applicant has been invited to speak in support of the application.

Public Comments

Interested persons may comment on the application during the February 2024 Council meeting during public testimony or the Federal eRulemaking Portal (see **ADDRESSES**) until February 12, 2024 when the comment period ends. Information regarding the meeting is available at the Council's website at <http://www.npfmc.org>. Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**). Comments may also be submitted directly to NMFS (see **ADDRESSES**) by the end of the comment period (see **DATES**).

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

Dated: January 17, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024-01121 Filed 1-22-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD660]

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 and New England Fishery Management Councils (Councils) will hold a public meeting of their joint Northeast Trawl Advisory Panel.

DATES: The meeting will be held on Thursday, February 8, 2024, from 9 a.m. to 5 p.m., EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be conducted in person with a virtual option available.

Meeting address: The meeting will be held at the Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203; telephone: (703) 717-6200. Webinar registration details will be

posted to the calendar at www.mafmc.org prior to the meeting.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; 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 Councils' Northeast Trawl Advisory Panel will meet to review recent developments related to relevant fishery surveys, the Industry Based Multispecies Bottom Trawl Survey white paper, and Henry B. Bigelow bottom trawl survey contingency plan next steps. The Northeast Trawl Advisory Panel will also discuss topics related to survey redesign and mitigation, receive an update on the restrictor rope research manuscript and discuss potential expansion of that work, as well as brainstorm future research projects.

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, (302) 526-5251 at least 5 days prior to the meeting date.

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

Dated: January 18, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-01250 Filed 1-22-24; 8:45 am]

BILLING CODE 3510-22-P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB-2024-0004]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) is requesting the Office of Management and Budget's (OMB's) approval for a new information collection titled "Auto Finance Data Project."

DATES: Written comments are encouraged and must be received on or before March 25, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

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

- *Email:* PRA_Comments@cfpb.gov. Include Docket No. CFPB–2024–0004 in the subject line of the email.

- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278 or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Auto Finance Data Project.

OMB Control Number: 3170–00XX.

Type of Review: New information collection.

Affected Public: Auto finance companies.

Estimated Number of Respondents: 4,000.

Estimated Total Annual Burden Hours: 1,375.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act charges the CFPB with monitoring for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. The CFPB has previously researched and documented significant gaps in available auto finance data which culminated in the initial Auto Finance Data Pilot project launched in February 2023. The data collected as part of the Auto Finance Data Pilot project both confirmed the benefit of additional data collection to fully carry out the CFPB's mission, to fulfill the CFPB's mandate to monitor

the auto finance market for risks to consumers, and to inform the way the CFPB would propose to collect data in the future. The CFPB proposes to collect data in two separate processes.

The CFPB proposes to collect a set of data annually from lenders that originate greater than 20,000 auto loans in the previous calendar year. This data collection would mirror that which was collected in the Auto Finance Data Pilot. The CFPB also proposes to collect a set of data annually from lenders that originate greater than 500 loans and fewer than 20,000 loans in the previous calendar year. This data collection would annually collect information on the number of vehicles repossessed and the number of loan modifications.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2024–01230 Filed 1–22–24; 8:45 am]

BILLING CODE 4810–AM–P

COUNCIL ON ENVIRONMENTAL QUALITY

[CEQ–2023–0005]

Environmental Justice Scorecard

AGENCY: Council on Environmental Quality.

ACTION: Request for information; extension of comment period.

SUMMARY: On November 20, 2023, the Council on Environmental Quality (CEQ) published a request for information (RFI) to solicit feedback on Phase One of the Environmental Justice Scorecard, which will inform future versions of the Environmental Justice Scorecard. This notice extends the

deadline for receiving responses to this RFI by an additional 30 days, until February 22, 2024.

DATES: The comment period for the RFI published November 20, 2023, at 88 FR 80697, is extended. Comments should be received by 11:59 p.m. ET on February 22, 2024.

ADDRESSES: You may submit comments, identified by docket number CEQ–2023–0005, by any of the following methods:

- *Using the Federal eRulemaking Portal:* visit <https://www.regulations.gov> and follow the instructions for submitting comments. For more information, see <https://www.regulations.gov/faq>.

- By fax to 202–456–6546.

- By mail to Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503 (must be received by February 22, 2024).

Instructions: Your submission must include “Council on Environmental Quality” and the docket number for this RFI, which is CEQ–2023–0005.

CEQ will publish public comments it receives in response to this notice, including personal information, without change on <https://www.regulations.gov>. Please do not submit any information you consider to be private information, privileged or confidential commercial or financial information, or other information the disclosure of which is restricted by law.

Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response. Please feel free to respond to as many of the questions as you choose, indicating the number of each question that you are addressing. We encourage you to include your name and contact information, but it is not required. If you are responding on behalf of an organization, we further encourage you to include the organization's name, its type (e.g., academic, non-profit, professional society, community-based organization, industry, government, other), and your role in the organization. You may include references to academic literature or links to online material but please ensure all links are publicly available.

FOR FURTHER INFORMATION CONTACT:

Kareem Ihmeidan, Staff Assistant for Environmental Justice, 202–395–5750, AbdelKareem.Ihmeidan@ceq.eop.gov.

SUPPLEMENTARY INFORMATION: On November 20, 2023, CEQ published an RFI in the **Federal Register** (88 FR 80697) to solicit feedback for CEQ and the Office of Management and Budget on Phase One of the Environmental

Justice Scorecard, which will inform future versions of the Environmental Justice Scorecard. This notice extends the comment period by 30 days from the date of this notice in order to provide the public with additional time to provide feedback. Public comments should be received by 11:59 p.m. ET on February 22, 2024.

Matthew G. Lee-Ashley,
Chief of Staff.

[FR Doc. 2024–01270 Filed 1–22–24; 8:45 am]

BILLING CODE 3325–F4–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of Department of Defense Federal Advisory Committees— Defense Innovation Board

AGENCY: Office of the Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Meeting of Federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board (DIB) will take place.

DATES: Open to the public January 26, 2024, 10:00 a.m. to 11:30 a.m. Closed to the public January 26, 2024, 1:00 p.m. to 4:30 p.m. All Eastern Standard Time (EST).

ADDRESSES: The open portion of the DIB meeting will take place at the Pentagon and will be accessible to the public virtually; the closed portion of the meeting will be held in the Pentagon.

FOR FURTHER INFORMATION CONTACT: Dr. Marina Theodotou, the Designated Federal Officer (DFO) at (571) 372–7344 (voice) or osd.innovation@mail.mil. Mailing address is Defense Innovation Board, 4800 Mark Center Drive, Suite 15D08, Alexandria, VA 22350–3600. Website: <https://innovation.defense.gov>. The most up-to-date changes to the meeting agenda and link to the virtual meeting can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of 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) 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the DFO and the DoD, the DIB was unable to provide public

notification required by 41 CFR 102–3.150(a) concerning its January 26, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of Meeting: The mission of the DIB is to provide the Secretary of Defense, the Deputy Secretary of Defense, and the Under Secretary of Defense for Research and Engineering (USD(R&E)) independent advice and strategic insights on emerging and disruptive technologies and their impact on national security, adoption of commercial sector innovation best practices, and ways to leverage the U.S. innovation ecosystem to align structures, processes, and human capital practices to accelerate and scale innovation adoption, foster a culture of innovation and an experimentation mindset, and enable the DoD to build enduring advantages. The DIB focuses on innovation-related issues and topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(R&E). The objective of this DIB meeting is to obtain, review, and evaluate information related to the DIB’s mission and studies.

Agenda: The DIB’s open portion of the meeting will take place on January 26, 2024 from 10:00 a.m. to 11:30 a.m. The DFO, Dr. Marina Theodotou, will open the meeting and introduce the DIB Chair, Michael Bloomberg for his welcome and opening remarks. The DIB will present its findings and recommendations for deliberation and vote on two current studies: “Lowering Barriers to Innovation” and “Building a DoD Data Economy”. Subsequently, the DFO will read public comments into the meeting record, and then, the Chair will then preview new study topics followed by closing remarks. The DFO will then adjourn the open session.

The DIB’s closed portion of the meeting will take place January 26, 2024, from 1:00 p.m. to 4:30 p.m. During this time, the DIB will meet with senior Department leaders and other Subject Matter Experts from Industry and Academia to receive insights to receive related to leveraging capabilities to remain at the forefront of innovation, innovative technology adoption, and other strategic challenges that the DoD is currently facing related to innovation with allies and partners.

Meeting Accessibility: In accordance with section 1009(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that part of the DIB meeting will be closed to the public on January 26, 2024, 1:00 p.m. to 4:30 p.m. Specifically, the USD(R&E), as the DIB

Sponsor, in consultation with the DoD Office of General Counsel, has determined in writing that this portion of the meeting will be closed to the public because the DIB will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the classified nature of discussions related to national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meeting.

Pursuant to Federal statutes and regulations (the FACA and 41 CFR 102–3.140 and 102–3.150), the open portion of the meeting will be accessible to the public virtually on January 26, 2024, from 10:00 a.m. to 11:30 a.m. Members of the public wishing to attend the meeting virtually will be able to access a link published on the DIB website the morning of the meeting.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 1009(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the DIB in response to the stated agenda of the meeting or regarding the DIB’s mission in general. Written comments or statements should be submitted to Dr. Marina Theodotou, the DFO, via email to osd.innovation@mail.mil. Comments or statements must include the author’s name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements being submitted in response to the agenda set forth in this notice by 12:00 p.m. on January 23, 2024, to be considered by the DIB. The DFO will review all timely submitted written comments or statements with the DIB Chair and ensure the comments are provided to all members before the meeting. Written comments or statements received after this date may not be provided to the DIB until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the DIB’s website.

Dated: January 17, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–01226 Filed 1–22–24; 8:45 am]

BILLING CODE 6001–FR–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 7, 2024. A business meeting will be held the following month on Wednesday, March 6, 2024. Both the hearing and the business meeting are open to the public and both will be conducted remotely. Details about the remote platforms for the public hearing and the business meeting will be posted on the Commission's website, www.drbc.gov, at least ten days prior to the respective hearing and meeting dates. Both events will be streamed live on the Commission's YouTube channel.

Public Hearing. The Commission will conduct the public hearing virtually on February 7, 2024, commencing at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources. A list of the projects scheduled for hearing, including project descriptions, along with links to draft docket approvals, will be posted on the Commission's website, www.drbc.gov, in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on February 7, 2024 will be accepted through 5:00 p.m. on Monday, February 12, 2024.

The public is advised to check the Commission's website periodically during the ten days prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review. Items also may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

Business Meeting. The business meeting on March 6, 2024 will begin at 10:30 a.m. and will include: adoption of the Minutes of the Commission's December 6, 2023 business meeting; announcements of upcoming meetings and events; a report on hydrologic conditions; reports by the Executive Director and the Commission's General Counsel; and consideration of any items for which a hearing has been completed or is not required. The agenda is expected to include consideration of the draft dockets for withdrawals, discharges, and other projects that were

subjects of the public hearing on February 7, 2024.

After all scheduled business has been completed and as time allows, the business meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission off the record on any topic concerning management of the basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the March 6, 2024 business meeting on items for which a hearing was completed on February 7, 2024 or a previous date. Commission consideration on March 6, 2024 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Registration and Sign-Up for Oral Comment. Links for registration to attend the public hearing and the business meeting will be posted at www.drbc.gov at least ten days before each meeting date. Registrants who wish to comment on the record during the public hearing on February 7, 2024 or to address the Commissioners informally during the Open Public Comment session following the meeting on March 6, 2024 as time allows, will be asked to so indicate when registering. The Commission's public hearing, business meeting, and Open Public Comment session will also be livestreamed on YouTube at https://www.youtube.com/@DRBC_1961. For assistance, please contact Ms. Patricia Hausler of the Commission staff, at patricia.hausler@drbc.gov.

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through the Commission's web-based comment system, a link to which is provided at www.drbc.gov. Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628-0360. For

assistance, please contact Patricia Hausler at patricia.hausler@drbc.gov.

Accommodation for Special Needs. Closed captioning will be available on both webinar and live-stream platforms. Those with limited internet access may listen and speak at virtual public meetings of the DRBC using any of several toll-free phone numbers that will be provided to all virtual meeting registrants.

Individuals in need of other accommodations as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Donna Woolf, 609-883-9500, ext. 222. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager, at 609-883-9500, ext. 264.

Authority. Delaware River Basin Compact, Public Law 87-328, Approved September 27, 1961, 75 Statutes at Large, 688, sec. 14.4.

Dated: January 17, 2024.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2024-01376 Filed 1-22-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2024-25 Award Year Deadline Dates

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the 2024-25 award year deadline dates for the submission of requests and documents from postsecondary institutions for the Federal Perkins Loan (Perkins Loan) Program, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (collectively, the "Campus-Based programs"), Assistance Listing Numbers 84.038, 84.033, and 84.007.

DATES: The deadline dates for each program are specified in the chart in the Deadline Dates section of this notice.

FOR FURTHER INFORMATION CONTACT: Shannon Mahan, Division Chief, Grants

& Campus-Based Partner Division, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, Room 64C4, Washington, DC 20202-5453. Telephone: (202) 377-3019. Email: shannon.mahan@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION: The authority to award new Federal Perkins Loans to students has expired. Institutions that continue to service their Perkins Loans (or contract with a third-party servicer for servicing) are required to report all Perkins Loan activity on the institution's Fiscal

Operations Report and Application to Participate (FISAP).

The FWS program encourages the part-time employment of undergraduate and graduate students with need to help pay for their education and to involve the students in community service activities.

The FSEOG program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their education.

The Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its "Electronic Announcements," the

Department will continue to provide additional information for the individual deadline dates listed in the table under the Deadline Dates section of this notice. You will also find the information on the Department's Knowledge Center website at: <https://fsa.partners.ed.gov/knowledge-center>.

Deadline Dates: The following table provides the 2024-25 award year deadline dates for the submission of applications, reports, waiver requests, and other documents for the Campus-Based programs. Institutions must meet the established deadline dates to ensure consideration for funding or waiver, as appropriate.

2024-25 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2023-24 funds and the request for supplemental FWS funds for the 2024-25 award year.	The form must be submitted electronically through the Common Origination and Disbursement website at https://cod.ed.gov .	Wednesday, August 21, 2024.
2. The 2025-26 FISAP (reporting 2023-24 expenditure data and requesting funds for 2025-26).	The FISAP must be submitted electronically through the Common Origination and Disbursement website at https://cod.ed.gov .	Tuesday, October 1, 2024.
3. The Work Colleges Program Report of 2023-24 award year expenditures.	The FISAP signature page must be signed by the institution's chief executive officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 1130, Fairfax, VA 22038. For overnight delivery, mail to: FISAP Administrator, U.S. Department of Education, 4050 Legato Road, #1100, Fairfax, VA 22033. The report must be submitted electronically through the Common Origination and Disbursement website at https://cod.ed.gov .	Tuesday, October 1, 2024.
4. The 2023-24 Financial Assistance for Students with Intellectual Disabilities (Comprehensive Transition Program) Expenditure Report.	The signature page must be signed by the institution's chief executive officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 1130, Fairfax, VA 22038. For overnight delivery, mail to: FISAP Administrator, U.S. Department of Education, 4050 Legato Road, #1100, Fairfax, VA 22033. The report must be submitted electronically through the Common Origination and Disbursement website https://cod.ed.gov . The signature page must be signed by the institution's chief executive officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 1130, Fairfax, VA 22038. For overnight delivery, mail to: FISAP Administrator, U.S. Department of Education, 4050 Legato Road, #1100, Fairfax, VA 22033.	Tuesday, October 1, 2024.
5. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2025-26 award year— <i>NEW applicants only</i> .	The application and agreement must be submitted electronically through the Common Origination and Disbursement website at https://cod.ed.gov . The signature page must be signed by the institution's chief executive officer with an original signature and sent in the mail to: U.S. Department of Education, P.O. Box 1130, Fairfax, VA 22038. For overnight delivery, mail to: FISAP Administrator, U.S. Department of Education, 4050 Legato Road, #1100, Fairfax, VA 22033. All supporting application documents should be scanned and emailed to alanna.nelson@ed.gov .	Friday, November 1, 2024.
6. 2025-26 FISAP Edit Corrections	The corrections must be submitted electronically through the Common Origination and Disbursement website at https://cod.ed.gov .	Friday, December 13, 2024.
7. The 2025-26 FISAP Perkins Cash on Hand Update as of October 31, 2024.	The update must be submitted electronically through the Common Origination and Disbursement website https://cod.ed.gov .	Friday, December 13, 2024.

2024–25 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
8. Request for a waiver of the 2025–26 award year penalty for the underuse of 2023–24 award year funds.	The request for a waiver of the penalty and the justification must be submitted electronically through the Common Origination and Disbursement website at https://cod.ed.gov .	Monday, February 3, 2025.
9. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2025–26 award year— <i>RETURNING applicants only</i> .	The application and agreement must be submitted electronically through the Common Origination and Disbursement website at https://cod.ed.gov . The signature page must be signed by the institution's chief executive officer with an original signature and mailed to: FISAP Administrator, U.S. Department of Education, P.O. Box 1130, Fairfax, VA 22038. For overnight delivery, mail to: FISAP Administrator, U.S. Department of Education, 4050 Legato Road, #1100, Fairfax, VA 22033.	Monday, March 3, 2025.
10. Request for a waiver of the FWS Community Service Expenditure Requirement for the 2025–26 award year.	The request for a waiver must be submitted electronically through the Common Origination and Disbursement website at https://cod.ed.gov .	Monday, April 21, 2025.

Notes:

■ The deadline for electronic submissions is 11:59:00 p.m. (Eastern Time) on the applicable deadline date. Transmissions must be completed and accepted by 11:59:00 p.m. to meet the deadline.

■ Paper documents that are sent through the U.S. Postal Service must be postmarked or you must have a mail receipt stamped by the applicable deadline date.

■ The Secretary may consider on a case-by-case basis the effect that a major disaster, as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), or another unusual circumstance has on an institution in meeting the deadlines.

Proof of Mailing of Paper Documents

If you submit paper documents when permitted by mail, we accept as proof one of the following:

- (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (2) A legibly dated U.S. Postal Service postmark.
- (3) A dated shipping label, invoice, or receipt from a commercial courier (FedEx, UPS, etc.).
- (4) Any other proof of mailing acceptable to the Secretary.

If you mail your paper documents through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

All institutions are encouraged to use certified or at least first-class mail. Hand-delivery of paper documents is not accepted.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in specific “Electronic Announcements,” which are posted on the Department’s Knowledge Center

website (<https://fsapartners.ed.gov/knowledge-center>) at least 30 days before the established deadline date for the specific request. Information on these items also is found in the Federal Student Aid Handbook, which is posted on the Department’s Knowledge Center website.

Applicable Regulations: The following regulations apply to these programs:

- (1) Student Assistance General Provisions, 34 CFR part 668.
- (2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.
- (3) Federal Perkins Loan Program, 34 CFR part 674.
- (4) Federal Work-Study Program, 34 CFR part 675.
- (5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.
- (6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.
- (7) New restrictions on Lobbying, 34 CFR part 82.
- (8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.
- (9) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations in 2 CFR part 3485.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*

Richard Cordray,
Chief Operating Officer, Federal Student Aid.
[FR Doc. 2024–01232 Filed 1–22–24; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity,
Department of Energy.

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 February 13, 2024; 1–5:35 p.m. EST

Wednesday February 14, 2024; 8:30 a.m.–1 p.m. EST

ADDRESSES: The February meeting of the EAC will be held at the National Rural Electric Cooperative Association Headquarters in Arlington, VA, 4301 Wilson Blvd. Ste 1, 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-eac-february-2024-meeting>. Please note, you must register for each day you would like to attend.

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

February 13, 2024

- 12:45 p.m.–1 p.m. WebEx Attendee Sign-On
- 1 p.m.–1:15 p.m. Welcome, Introductions, Developments Since October Meeting
- 1:15 p.m.–1:45 p.m. Introductory Remarks From the Office of Electricity
- 1:45 p.m.–2:45 p.m. OE Moderated Discussion on Risk-Informed Decision-Making
- 2:45 p.m.–3:30 p.m. North American Energy Reliability Corporation Winter Reliability Assessment
- 3:30 p.m.–3:45 p.m. Break
- 3:45 p.m.–4:45 p.m. OE Moderated Discussion Regarding Interrelationship Between Gas and Electric
- 4:45 p.m.–5:30 p.m. OE Update on the Grid Storage Launchpad
- 5:30 p.m.–5:35 p.m. Wrap-Up and Adjourn Day 1 of the February 2024 EAC Meeting

February 14, 2024

- 8 a.m.–8:30 a.m. WebEx Attendee Sign-On
- 8:30 a.m.–8:45 a.m. Opening Remarks
- 8:45 a.m.–10:15 a.m. OE Moderated Discussion on Transmission Infrastructure Improvement Options
- 10:15 a.m.–10:30 a.m. Break
- 10:30 a.m.–11 a.m. DOE Energy Justice and Equity Briefing
- 11 a.m.–12 p.m. Update from OE on Smart Grid Reports and Transport Electrification Initiatives
- 12 p.m.–12:10 p.m. Energy Storage Subcommittee Update
- 12:10 p.m.–12:20 p.m. Smart Grid Subcommittee Update
- 12:20 p.m.–12:30 p.m. GRNS Subcommittee Update
- 12:30 p.m.–12:45 p.m. Public Comments
- 12:45 p.m.–1:00 p.m. Wrap-Up and Adjourn February 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-eac-february-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 February 14, 2024, but must register in advance by 5PM Eastern time on February 13, 2024, by sending a written request identified by “Electricity Advisory Committee February 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 February 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-eac-february-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 January 17, 2024, by David Borak, Deputy 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 January 17, 2024.

Treena V. Garrett,
Federal Register Liaison Officer, U.S.
Department of Energy.

[FR Doc. 2024–01168 Filed 1–22–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2656–002.

Applicants: Louisville Gas and Electric Company.

Description: Compliance filing: Compliance Filing Rev Rate Schedule FERC No. 525 to be effective 3/17/2021.
Filed Date: 1/16/24.

Accession Number: 20240116–5242.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24–181–001.

Applicants: Frankland Road Solar, LLC.
Description: Tariff Amendment: Amendment to MBR Application to be effective 12/22/2023.
Filed Date: 1/16/24.
Accession Number: 20240116–5237.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–892–000.
Applicants: SWG Arapahoe, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5136.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–893–000.
Applicants: Three Peaks Power, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5137.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–894–000.
Applicants: Twiggs County Solar, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5141.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–895–000.
Applicants: Blue Sky West, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5142.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–896–000.
Applicants: Valencia Power, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5143.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–897–000.
Applicants: Broad River Energy LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5144.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–898–000.
Applicants: CID Solar, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5145.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–899–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement FERC No. 901 to be effective 12/18/2023.
Filed Date: 1/16/24.
Accession Number: 20240116–5151.
Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24–900–000.
Applicants: Comanche Solar PV LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5156.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–902–000.
Applicants: Cottonwood Solar, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5171.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–903–000.
Applicants: EnergyMark, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5172.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–904–000.
Applicants: Evergreen Wind Power II, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5175.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–906–000.
Applicants: FL Solar 1, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5177.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–907–000.
Applicants: FL Solar 4, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5178.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–908–000.
Applicants: Fountain Valley Power, L.L.C.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5182.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–909–000.
Applicants: GA Solar 3, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5184.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–910–000.
Applicants: Greeley Energy Facility LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5191.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–911–000.

Applicants: Hancock Wind, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5192.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–912–000.
Applicants: Imperial Valley Solar Company (IVSC) 2, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5193.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–913–000.
Applicants: Innovative Solar 42, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5194.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–914–000.
Applicants: Goal Line, L.P.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5204.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–915–000.
Applicants: Grand View PV Solar Two LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5205.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–916–000.
Applicants: Beaumont ESS, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 2/23/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5213.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–917–000.
Applicants: Placerita ESS, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 2/23/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5214.
Comment Date: 5 p.m. ET 2/6/24.
 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: <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).

Dated: January 16, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-01146 Filed 1-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24-916-000]

Beaumont ESS, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Beaumont ESS, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 6, 2024.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). 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'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: January 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-01264 Filed 1-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2362-044]

ALLETE, Inc.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license to continue to operate and maintain the Grand Rapids Hydroelectric Project (project). The project is located on the Mississippi River in Itasca County, Minnesota. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA 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. For assistance, contact FERC Online Support at FEROnlineSupport@ferc.gov, or toll-free at (866) 208-3676, or for TTY, (202) 502-8659.

You may also register online at <https://ferconline.ferc.gov/FEROnline.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 OPP@ferc.gov.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-2362-044.

For further information, contact Laura Washington at 202-502-6072 or laura.washington@ferc.gov.

Dated: January 16, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-01143 Filed 1-22-24; 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: RP24-328-000.

Applicants: Southern LNG Company, L.L.C.

Description: § 4(d) Rate Filing: Dredging Surcharge Cost Adjustment—2024 to be effective 3/1/2024.

Filed Date: 1/17/24.

Accession Number: 20240117-5063.

Comment Date: 5 p.m. ET 1/29/24.

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. The filings are accessible in

the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: January 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-01266 Filed 1-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2509-000]

PE Hydro Generation, LLC; Notice of Authorization for Continued Project Operation

The license for the Shenandoah Hydroelectric Project No. 2509 was issued for a period ending December 31, 2023.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms

and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2509 is issued to PE Hydro Generation, LLC for a period effective January 1, 2024, through December 31, 2024, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 2024, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PE Hydro Generation, LLC is authorized to continue operation of the Shenandoah Hydroelectric Project under the terms and conditions of the prior license until the issuance of a subsequent license for the project or other disposition under the FPA, whichever comes first.

Dated: January 16, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-01140 Filed 1-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2544-052]

Hydro Technology, Inc.; Notice of Intent To Prepare an Environmental Assessment

On December 27, 2021, Hydro Technology, Inc filed an application for a subsequent license to continue operating the existing 1,200-kilowatt Meyers Falls Hydroelectric Project No. 2544 (Meyers Falls Project or project). The project is located on the Colville River in Stevens County, Washington. The project does not occupy federal land.

In accordance with the Commission's regulations, on March 28, 2023,

Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. On June 7, 2023, the Commission issued a notice indicating that staff intended to prepare a draft and final Environmental Assessment (EA). However, upon further review, staff intends to prepare a single EA on the application to relicense the Meyers Falls Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The 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*.

By this notice, Commission staff is updating the procedural schedule for completing the EA. The revised schedule is shown below. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	May 2024. ¹
Comments on EA	June 2024.

Any questions regarding this notice may be directed to Maryam Zavareh at (202) 502-8474 or *maryam.zavareh@ferc.gov*.

Dated: January 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-01262 Filed 1-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2391-000]

PE Hydro Generation, LLC; Notice of Authorization for Continued Project Operation

The license for the Warren Hydroelectric Project No. 2391 was issued for a period ending December 31, 2023.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2391 is issued to PE Hydro Generation, LLC for a period effective January 1, 2024, through December 31, 2024, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 2024, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PE Hydro Generation, LLC is authorized to continue operation of the Warren Hydroelectric Project under the terms and conditions of the prior license until the issuance of a subsequent

license for the project or other disposition under the FPA, whichever comes first.

Dated: January 16, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-01142 Filed 1-22-24; 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: EC24-41-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Tri-State Generation and Transmission Association, Inc.

Filed Date: 1/16/24.

Accession Number: 20240116-5302.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: EC24-42-000.

Applicants: Hunterstown Gen Holdings, LLC, Kestrel Acquisition, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Hunterstown Gen Holdings, LLC, et al.

Filed Date: 1/16/24.

Accession Number: 20240116-5305.

Comment Date: 5 p.m. ET 2/6/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21-97-001.

Applicants: Iris Solar, LLC.

Description: Iris Solar, LLC submits Notice of Change in Facts of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/11/24.

Accession Number: 20240111-5116.

Comment Date: 5 p.m. ET 2/1/24.

Docket Numbers: EG24-79-000.

Applicants: Bristol BESS, LLC.

Description: Bristol BESS, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/16/24.

Accession Number: 20240116-5288.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: EG24-80-000.

Applicants: Morgan Energy Center, LLC.

Description: Morgan Energy Center, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

¹ The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) (2022) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. See National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, as amended by section 107(g)(1)(B)(iii) of the Fiscal Responsibility Act of 2023, Public Law 118-5, 4336a, 137 Stat. 42.

Filed Date: 1/17/24.
Accession Number: 20240117–5109.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: EG24–81–000.
Applicants: Decatur Solar Energy Center, LLC.
Description: Decatur Solar Energy Center, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/17/24.
Accession Number: 20240117–5152.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: EG24–82–000.
Applicants: Washington County Solar, LLC.
Description: Washington County Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/17/24.
Accession Number: 20240117–5154.
Comment Date: 5 p.m. ET 2/7/24.
 Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:
Docket Numbers: EL24–55–000.
Applicants: Brainerd Solar, LLC.
Description: Petition for Declaratory Order of Brainerd Solar, LLC.
Filed Date: 1/16/24.
Accession Number: 20240116–5287.
Comment Date: 5 p.m. ET 2/15/24.
 Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER18–1918–004.
Applicants: Kestrel Acquisition, LLC.
Description: Request for Waiver, Expedited Consideration and Informational Filing Regarding Upstream Change in Control of Kestrel Acquisition, LLC.
Filed Date: 1/16/24.
Accession Number: 20240116–5306.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER22–2360–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Compliance filing: Order No. 881 Managing Transmission Line Ratings to be effective 7/12/2025.
Filed Date: 1/17/24.
Accession Number: 20240117–5145.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER23–2171–002.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Response to Deficiency Letter, Request for Shortened Comment Period to be effective 1/1/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5247.
Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24–483–001.
Applicants: Duke Energy Florida, LLC.
Description: Tariff Amendment: DEF–FMPA Amendment SA No. 148 to be effective 1/1/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5259.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–905–000.
Applicants: Hopi Utilities Corporation.
Description: Petition for Limited Waiver of Hopi Utilities Corporation.
Filed Date: 1/12/24.
Accession Number: 20240112–5201.
Comment Date: 5 p.m. ET 1/24/24.
Docket Numbers: ER24–918–000.
Applicants: Bristol BESS, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 3/16/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5246.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–919–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Filing of Gunnison Agreement to be effective 1/1/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5269.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–921–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of DTIA & #40;RS 232) JUA & #40;RS 233) Agency Agmt & #40;RS 234) to be effective 3/18/2024.
Filed Date: 1/17/24.
Accession Number: 20240117–5033.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–922–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3158R1 Basin Electric and MidAmerican Energy Att AO Cancel to be effective 12/31/2023.
Filed Date: 1/17/24.
Accession Number: 20240117–5037.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–923–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3161R1 Basin Electric and MidAmerican Energy Att AO Cancel to be effective 12/31/2023.
Filed Date: 1/17/24.
Accession Number: 20240117–5043.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–924–000.
Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 416, West Camp Wind LGIA to be effective 12/18/2023.
Filed Date: 1/17/24.
Accession Number: 20240117–5050.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–925–000.
Applicants: Wilderness Line Holdings, LLC.
Description: Compliance filing: Order No. 881 Compliance Filing to be effective 7/12/2025.
Filed Date: 1/17/24.
Accession Number: 20240117–5075.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–926–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii): FE PA submits one Construction Agreement, SA No. 6649 to be effective 3/18/2024.
Filed Date: 1/17/24.
Accession Number: 20240117–5098.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–927–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii): FE PA submits one Construction Agreement, SA No. 6926 to be effective 3/18/2024.
Filed Date: 1/17/24.
Accession Number: 20240117–5099.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–928–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to 4 Service Agreements re: FirstEnergy Reorganization to be effective 1/1/2024.
Filed Date: 1/17/24.
Accession Number: 20240117–5112.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–929–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 7155; Queue No. AE1–093 to be effective 12/18/2023.
Filed Date: 1/17/24.
Accession Number: 20240117–5155.
Comment Date: 5 p.m. ET 2/7/24.
Docket Numbers: ER24–930–000.
Applicants: Algonquin Tinker Gen Co.
Description: § 205(d) Rate Filing: Notice of Succession for MBR & Reactive Rate Tariffs to 2569848 Alberta ULC to be effective 12/28/2023.

Filed Date: 1/17/24.

Accession Number: 20240117–5159.

Comment Date: 5 p.m. ET 2/7/24.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF24–194–000; EL24–55–000.

Applicants: Brainerd Solar, LLC, Brainerd Solar, LLC.

Description: Refund Report of Brainerd Solar, LLC.

Filed Date: 1/17/24.

Accession Number: 20240117–5157.

Comment Date: 5 p.m. ET 2/7/24.

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: January 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–01267 Filed 1–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2361–056]

ALLETE, Inc.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a subsequent license to continue to operate and maintain the Prairie River Hydroelectric Project (project). The project is located on the Prairie River in Itasca County, Minnesota. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA 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. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at <https://ferconline.ferc.gov/FERConline.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 OPP@ferc.gov.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments

using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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, Acting 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, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2361–056.

For further information, contact Laura Washington at 202–502–6072 or laura.washington@ferc.gov.

Dated: January 16, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–01144 Filed 1–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2425–000]

PE Hydro Generation, LLC; Notice of Authorization for Continued Project Operation

The license for the Luray and Newport Hydroelectric Project No. 2425 was issued for a period ending December 31, 2023.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms

and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2425 is issued to PE Hydro Generation, LLC for a period effective January 1, 2024, through December 31, 2024, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 2024, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PE Hydro Generation, LLC is authorized to continue operation of the Luray and Newport Hydroelectric Project under the terms and conditions of the prior license until the issuance of a subsequent license for the project or other disposition under the FPA, whichever comes first.

Dated: January 16, 2024.

Debbie-Anne Reese,
Acting Secretary.

[FR Doc. 2024-01141 Filed 1-22-24; 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: EC24-39-000.

Applicants: Cambria Wind LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Cambria Wind LLC.

Filed Date: 1/12/24.

Accession Number: 20240112-5197.

Comment Date: 5 p.m. ET 2/2/24.

Docket Numbers: EC24-40-000.

Applicants: Mulligan Solar, LLC, Great Pathfinder Wind, LLC, ERG US Holdings, Inc.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Mulligan Solar, LLC, et al.

Filed Date: 1/16/24.

Accession Number: 20240116-5088.

Comment Date: 5 p.m. ET 2/6/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24-228-002.

Applicants: South Cheyenne Solar, LLC.

Description: Report Filing; Supplement to MBR Authority Application Filing to be effective N/A.

Filed Date: 1/11/24.

Accession Number: 20240111-5143.

Comment Date: 5 p.m. ET 1/22/24.

Docket Numbers: ER24-374-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Deficiency Response—FTR Bilateral Agreement Reform to be effective 6/30/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5190.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-793-001.

Applicants: Entergy Texas, Inc.

Description: Tariff Amendment: ETI-ETEC First Revised Coordination Services Agreement to be effective 2/27/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5050.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-796-001.

Applicants: Entergy Texas, Inc.

Description: Tariff Amendment: ETI-ETEC Second Revised LBA Agreement to be effective 2/27/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5056.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-805-001.

Applicants: Entergy Arkansas, LLC.

Description: Tariff Amendment: Updated LBA Agreement to be effective 3/2/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5199.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-875-000.

Applicants: Midcontinent Independent System Operator, Inc., Duke Energy Indiana, LLC

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2024-01-16 SA 3646 Termination of DEI-Hardy Hills Substitute E&P (J1063) to be effective 3/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5083.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-876-000.

Applicants: KMC Thermo, LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5105.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-877-000.

Applicants: Maricopa West Solar PV, LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5112.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-878-000.

Applicants: Marina Energy, LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5113.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-879-000.

Applicants: Mesquite Power, LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5115.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-880-000.

Applicants: MS Solar 3, LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5116.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-881-000.

Applicants: Mulberry Farm, LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5118.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-882-000.

Applicants: Palouse Wind, LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5120.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-883-000.

Applicants: Pavant Solar LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5121.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-884-000.

Applicants: Pio Pico Energy Center, LLC.

Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116-5122.

Comment Date: 5 p.m. ET 2/6/24.

Docket Numbers: ER24-885-000.

Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205: Working Capital Fund Rebalancing to be effective 3/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5127.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–886–000.
Applicants: RE Camelot LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5128.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–887–000.
Applicants: RE Columbia Two LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5129.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–888–000.
Applicants: Selmer Farm, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5131.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–889–000.
Applicants: Sunflower Wind Project, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5132.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–890–000.
Applicants: Sweetwater Solar, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5134.
Comment Date: 5 p.m. ET 2/6/24.
Docket Numbers: ER24–891–000.
Applicants: AZ Solar 1, LLC.
Description: Compliance filing: Tariff Revisions to be effective 1/17/2024.
Filed Date: 1/16/24.
Accession Number: 20240116–5135.
Comment Date: 5 p.m. ET 2/6/24.
 Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES24–20–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Consolidated Edison Company of New York, Inc.
Filed Date: 1/16/24.
Accession Number: 20240116–5087.
Comment Date: 5 p.m. ET 2/6/24.
 The filings are accessible in the Commission's eLibrary system ([https://](https://elibrary.ferc.gov/idmws/search/fercgensearch.asp)

elibrary.ferc.gov/idmws/search/fercgensearch.asp) by querying the docket number.

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Dated: January 16, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01147 Filed 1–22–24; 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: PR24–38–000.
Applicants: Agua Blanca, LLC.
Description: Agua Blanca Rate Certification to be effective N/A.
Filed Date: 1/12/24.
Accession Number: 20240112–5119.
Comment Date: 5 p.m. ET 2/2/24.
Docket Numbers: PR24–39–000.
Applicants: Worsham-Steed Gas Storage, LLC.
Description: § 284.123 Rate Filing: Section 284.504 (b) Filg_Hartree Acquisition to be effective N/A.

Filed Date: 1/12/24.

Accession Number: 20240112–5124.

Comment Date: 5 p.m. ET 2/2/24.

Docket Numbers: PR24–40–000.

Applicants: Hill-Lake Gas Storage, LLC.

Description: § 284.123 Rate Filing: Section 284.504 (b) Filg_Hartree Acquisition to be effective N/A.

Filed Date: 1/12/24.

Accession Number: 20240112–5126.

Comment Date: 5 p.m. ET 2/2/24.

Docket Numbers: PR24–41–000.

Applicants: Arcadia Gas Storage, LLC.

Description: Arcadia Gas Storage, LLC submits Informational Filing Concerning Market-Based Rate Authority.

Filed Date: 1/12/24.

Accession Number: 20240112–5175.

Comment Date: 5 p.m. ET 2/2/24.

Docket Numbers: RP24–313–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements—1/13/2024 to be effective 1/13/2024.

Filed Date: 1/12/24.

Accession Number: 20240112–5073.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–314–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 1–13–24 to be effective 1/13/2024.

Filed Date: 1/12/24.

Accession Number: 20240112–5076.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–315–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements—01/15/2024 to be effective 1/15/2024.

Filed Date: 1/12/24.

Accession Number: 20240112–5112.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–316–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Compliance filing: Washington Storage Section 284.504(b) Filg_Hartree Acquisition to be effective N/A.

Filed Date: 1/12/24.

Accession Number: 20240112–5118.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–317–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2024–01–12 Negotiated Rate Agreement to be effective 1/13/2024.

Filed Date: 1/12/24.

Accession Number: 20240112–5146.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–318–000.

Applicants: Monroe Gas Storage Company, LLC.

Description: Monroe Gas Storage Company, LLC submits Informational Filing Concerning Market-Based Rate Authority.

Filed Date: 1/12/24.

Accession Number: 20240112–5150.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–319–000.

Applicants: Cove Point LNG, LP.
Description: § 4(d) Rate Filing: Cove Point—January 12, 2024 Negotiated Rate Agreement to be effective 1/13/2024.

Filed Date: 1/12/24.

Accession Number: 20240112–5147.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–320–000.

Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: TPC 2024–01–12 Negotiated Rate Agreement to be effective 1/13/2024.

Filed Date: 1/12/24.

Accession Number: 20240112–5149.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–321–000.

Applicants: Perryville Gas Storage LLC.

Description: Perryville Gas Storage LLC submits Informational Filing Concerning Market-Based Rate Authority.

Filed Date: 1/12/24.

Accession Number: 20240112–5158.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–322–000.

Applicants: Pine Prairie Energy Center, LLC.

Description: Pine Prairie Energy Center, LLC submits Informational Filing Concerning Market-Based Rate Authority.

Filed Date: 1/12/24.

Accession Number: 20240112–5159.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–323–000.

Applicants: SG Resources Mississippi, L.L.C.

Description: SG Resources Mississippi, L.L.C. submits Informational Filing Concerning Market-Based Rate Authority.

Filed Date: 1/12/24.

Accession Number: 20240112–5162.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–324–000.

Applicants: Cadeville Gas Storage LLC.

Description: Cadeville Gas Storage LLC submits Informational Filing Concerning Market-Based Rate Authority.

Filed Date: 1/12/24.

Accession Number: 20240112–5163.

Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: RP24–325–000.

Applicants: Equitrans, L.P.

Description: Compliance filing: Penalty Revenue Crediting Report—2023 to be effective N/A.

Filed Date: 1/16/24.

Accession Number: 20240116–5117.

Comment Date: 5 p.m. ET 1/29/24.

Docket Numbers: RP24–326–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 1–17–24 to be effective 1/17/2024.

Filed Date: 1/16/24.

Accession Number: 20240116–5154.

Comment Date: 5 p.m. ET 1/29/24.

Docket Numbers: RP24–327–000.

Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Award of Capacity Timeline Filing to be effective 2/16/2024.

Filed Date: 1/16/24.

Accession Number: 20240116–5169.

Comment Date: 5 p.m. ET 1/29/24.

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.

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: January 16, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–01145 Filed 1–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–13–000]

MountainWest Overthrust Pipeline, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Westbound Compression Expansion Project

On November 2, 2023, MountainWest Overthrust Pipeline, LLC (Overthrust) filed an application in Docket No. CP24–13–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Westbound Compression Expansion Project (Project), which would expand Overthrust's natural gas transmission system at its existing Point of Rocks and Rock Springs Compressor Stations in Sweetwater County, Wyoming, as well as related aboveground facilities in Uinta and Lincoln Counties, Wyoming. The Project would provide an additional 325,000 dekatherms per day (Dth/d) of year-round firm transportation capacity on its existing mainline to western and northwestern U.S. gas markets.

On November 15, 2023, 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

Schedule for Environmental Review

Issuance of EA—June 24, 2024
90-day Federal Authorization Decision

Deadline²—September 22, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies

¹ 40 CFR 1501.10 (2020).

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.

are kept informed of the Project's progress.

Project Description

The Project would provide an expansion of Overthrust's existing pipeline system that would enable Overthrust to provide an additional 325,000 Dth/d of westbound firm transportation capacity to a new delivery point being constructed by Kern River Gas Transmission near Overthrust's existing Roberson Compressor Station in Lincoln County, Wyoming.

The Project would consist of the following facilities and activities, all in Wyoming:

- addition of one gas-fired turbine driven compressor unit with 15,900 nominal horsepower (hp) at the existing Point of Rocks Compressor Station in Sweetwater County;
- addition of one gas-fired turbine driven compressor unit with 15,900 nominal hp at the existing Rock Springs Compressor Station in Sweetwater County;
- an approximate 1,400-foot-long, 24-inch-diameter pipe interconnect (JTL-148) extending from a new tap on Overthrust's mainline 122 at its existing North Rendezvous Tap facility to a new meter station being constructed by Kern River Gas Transmission at an existing site in Lincoln County;
- upgrades to the existing Rockies Express Pipeline Wamsutter Meter Station to accommodate additional gas volumes in Sweetwater County;
- upgrades at three existing facilities—Roberson Compressor Station (new pig launcher and receiver³ in Lincoln County), Cabin 31 Interconnect Pipeline Facility (new pig launcher in Sweetwater County), and Opal Interconnect Pipeline Facility (new pig launcher in Lincoln County), to support in-line inspections along the Overthrust mainline; and
- modifications to Overthrust's existing Granger Interconnect Facility to accommodate new flow conditions in Sweetwater County.

Background

On December 14, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Westbound Compression Expansion 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. In response to the Notice of Scoping, the Commission received comments from the City Planner of Rock Springs, Wyoming, Wyoming Game and Fish Department in Cheyenne, Wyoming, and Wyoming Department of Environmental Quality. The primary issue raised by the City Planner of Rock Springs is a request for Overthrust to inform the Rock Springs Planning Department with any proposed additions or changes at the existing Blairtown Yard, which is within the city limits of Rock Springs. Wyoming Game and Fish Department requested adherence to the protection of wildlife and wildlife habitat in the vicinity of the Project. Wyoming Department of Environmental Quality comments requested thorough analysis of groundwater and surface water impacts of the Project. All substantive comments will be addressed in the EA.

Portions of the Project would affect lands that Overthrust has leased from the Bureau of Land Management; therefore, the Bureau of Land Management is a cooperating agency in the preparation of the EA.

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., CP24-13), 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: January 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-01265 Filed 1-22-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

³ A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission’s website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the

last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
<i>Prohibited:</i> 1. CP17–117–000 CP17–118–000	1–16–2024	FERC Staff. ¹
<i>Exempt:</i> None. ....	.....

¹ Emailed comments from George Anderson.

Dated: January 16, 2024.
Debbie-Anne A. Reese,
Acting Secretary.
[FR Doc. 2024–01138 Filed 1–22–24; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2715–026]

Kaukauna Utilities; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* New Major License.
- b. *Project No.:* 2715–026.
- c. *Date Filed:* July 22, 2022.
- d. *Applicant:* Kaukauna Utilities (Kaukauna).
- e. *Name of Project:* Combined Locks Hydroelectric Project (Combined Locks Project or project).
- f. *Location:* The existing project is located on the Lower Fox River in the Village of Combined Locks and the Village of Little Chute, Outagamie County, Wisconsin.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
- h. *Applicant Contact:* Zachary Moureau, Environmental & Compliance Manager, Kaukauna Utilities, 777 Island Street, Kaukauna, WI 54130–7077; (920) 462–0238; zmoureau@ku-wi.org.
- i. *FERC Contact:* Kelly Wolcott at (202) 502–6480, or email at kelly.wolcott@ferc.gov.
- j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice;

reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission’s eFiling system at <https://ferconline.ferc.gov/FEROnline.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>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne Reese, Acting 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 Reese, Acting 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: Combined Locks Hydroelectric Project (P–2715–026).

The Commission’s Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The Combined Locks Project includes a 719.7-foot-long concrete and cyclopean stone dam that includes: (1) a 2.6-foot-long north abutment; (2) a 183-foot-long, 27-foot-high non-overflow section; (3) a 182-foot-long, 30.4-foot-high section with seven bays that each contain a 20-foot-wide, 15.5-foot-high Tainter gate; (4) a 286.1-foot-long, 23.2-foot-high spillway section with: (a) 1.9-foot-high flashboards; (b) a crest elevation of 676.50 feet International Great Lakes Datum of 1985 (IGLD 85) at the top of the flashboards; (c) an 11.7-foot-wide, 2.7-foot-high ice sluice gate; and (d) a 7.3-foot-wide, 2.7-foot-high debris sluice gate; (5) a 65-foot-long, 36.1-foot-high intake structure with two 20-foot-wide, 19.7-foot-high sluice gates each equipped with a 30.3-foot-wide, 31.8-foot-high trashrack with 3.5-inch clear bar spacing; and (6) a 1-foot-long south abutment. The dam creates an impoundment that has a surface area of approximately 127 acres at an elevation of 677.79 feet IGLD 85.

From the impoundment, water flows through the intake structure to a 130-foot-long, 65-foot-wide concrete powerhouse that contains two 3.1-megawatt (MW) Kaplan turbine-generator units, for a total installed capacity of 6.2 MW. Water is discharged from the turbines to an approximately 250-foot-long, 160-foot-wide tailrace.

The project generators are connected to the regional electric grid by: (1) a 265-foot-long, 4.16-kilovolt (kV) above-ground generator lead line; (2) a 4.16/12.47-kV step-up transformer approximately 200 feet west of the powerhouse; and (3) a 1,442-foot-long, 12.47-kV transmission line that connects to a non-project substation, and that includes a 1,059-foot-long above-ground segment and a 383-foot-long underground segment. The project includes a 10-foot-long, 7.2-foot-wide electrical control building located at the south side of the 182-foot-long section of the dam.

The minimum and maximum hydraulic capacities of the powerhouse are 715 and 5,400 cubic feet per second, respectively. The average annual energy production of the Combined Locks Project from 2014 through 2020 was 42,744 megawatt-hours.

The current license requires Kaukauna to minimize impoundment fluctuations by operating the project in a run-of-river mode, such that project outflow approximates the “instantaneous sum of all inflow.” Kaukauna maintains the surface elevation of the impoundment between 675.74 and 677.79 feet IGLD 85.

Kaukauna proposes to continue operating the project in a run-of-river mode and maintaining the surface elevation of the impoundment between 675.74 and 677.79 feet IGLD 85. Kaukauna also proposes to: (1) continue to dispose of large woody debris and trash collected from the trashracks; (2) implement invasive species monitoring every 2 years, and manage species categorized as “prohibited” by the Wisconsin Department of Natural Resources if observed in the project boundary; and (3) evaluate the project dam for National Register of Historic Places eligibility.

m. A copy of the application can be viewed on the Commission’s website at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title “COMMENTS,” “REPLY COMMENTS,” “RECOMMENDATIONS,” “TERMS AND CONDITIONS,” or “PRESCRIPTIONS;” (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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.

You may also register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *The applicant must file no later than 60 days following the date of issuance of this notice:* (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Filing of Comments, Recommendations, Terms and Conditions, and Prescriptions.	March 2024.
Filing of Reply Comments	April 2024.

Dated: January 16, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–01139 Filed 1–22–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–917–000]

Placerita ESS, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Placerita ESS, LLC’s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant’s request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 6, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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

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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: January 17, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-01263 Filed 1-22-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11390-01-OAR]

Notice of Transfer of Data Potentially Claimed as Confidential Business Information Under the Clean Air Act to the United States Energy Information Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that information submitted to EPA's Office of Air and Radiation, Office of Transportation and Air Quality, pursuant to the Clean Air Act, including information that may be claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the United States Energy Information Administration (EIA), a Federal agency pursuant to a written Information Sharing Agreement between EPA and EIA.

DATES: Access by EIA to this material, including CBI, discussed in this Notice, is ongoing and expected to occur beginning February 2, 2024.

FOR FURTHER INFORMATION CONTACT: Anne-Marie Pastorkovich, Attorney/Advisor, Compliance Division, Office of Transportation and Air Quality; telephone number: 202-343-9623; email address: pastorkovich.anne-marie@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is providing notice of disclosure under a written Information Sharing Agreement with EIA and in accordance with 40 CFR 2.209(c). EPA and EIA have entered an Information Sharing Agreement that will remain in effect until December 19,

2028, unless terminated earlier by either party or both parties.

EPA collects various data on conventional and renewable fuels, including registration and compliance information, to implement the Renewable Fuel Standard (RFS) program and other fuels programs under section 211(o) of the Clean Air Act. This includes collecting information from submitter companies about their facilities, products, and generation and use of renewable identification numbers (RINs). These data may be claimed as CBI by the submitter.

EIA is the statistical and analytical agency of the U.S. Department of Energy (DOE). EIA collects, analyzes, and disseminates independent and impartial energy information to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

The Information Sharing Agreement covers information collected by EPA related to fuels, fuel additives, and regulated blendstocks under 40 CFR part 1090 and renewable fuels under 40 CFR part 80. The data include information about company and facility registrations, fuels compliance reporting, and transactional reporting (e.g., benzene and sulfur credits, and renewable identification numbers, or "RINs"). Most of the information that may be shared under this agreement is claimed as CBI by submitters. Information claimed as CBI will be securely transmitted from EPA to EIA and will be handled and stored by each agency in a manner appropriately secure for such information. EPA believes that this Information Sharing Agreement will facilitate and support policy development, market understanding, and data verification for credits and RINs, in support of fuels program administration. EPA is publishing this notice to make submitters aware of our intention to release data that may be entitled to confidential treatment to EIA.

Byron J. Bunker,

Director, Compliance Division.

[FR Doc. 2024-01233 Filed 1-22-24; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND DATE: Thursday, January 25, 2024, at 10:30 a.m.

PLACE: The meeting will be held via teleconference.

STATUS: The meeting will be open to public observation.

MATTERS TO BE CONSIDERED:

1. Amendment of the Standard Operating Procedures Between EXIM and PEFCO

CONTACT PERSON FOR MORE INFORMATION:

Dana Jackson (202-329-2052; dana.jackson@exim.gov). Members of the public who wish to attend the meeting may do so via teleconference and must register using the link below by noon Wednesday January 24, 2024. After completing the registration, individuals will receive a confirmation email containing information about joining the webinar.

https://teams.microsoft.com/registration/PAFTuZHmK2Zb1GDkIVFJw,qlj2KyO1UUm41WL18xw5VQ.jAoyB5Oho0CcCZLOc-dxhQ.s3XCRslm9U-__KVPi_WOjw,Gw-O3ZHuyUK9_4f7BRBQ9w,SxnJJMYLGE-UYc1-y7Dk0g?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.

Dated: January 19, 2024.

Kalesha Malloy,

IT Specialist.

[FR Doc. 2024-01318 Filed 1-19-24; 11:15 am]

BILLING CODE 6690-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 89 FR 3402.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, January 23, 2024, at 1:00 p.m. and its continuation at the conclusion of the open meeting on January 25, 2024.

CHANGES IN THE MEETING: The meeting will begin at 10:00 a.m. on January 23, 2024.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2024-01310 Filed 1-19-24; 11:15 am]

BILLING CODE 6715-01-P

**FEDERAL FINANCIAL INSTITUTIONS
EXAMINATION COUNCIL****[Docket No. AS24–02]****Appraisal Subcommittee Notice of
Meeting**

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special 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 Meeting on this date.

Location: Virtual meeting via Webex.

Date: January 17, 2024.

Time: 10:38 a.m. ET.

Action and Discussion Items

ASC Grants Handbook (revised)

ASC Fiscal Year 2024 Notice of Funding Availability (State Grant)

The ASC convened a Special Meeting to vote on the above-referenced items. The vote for each item passed 7–0.

James R. Park,

Executive Director.

[FR Doc. 2024–01260 Filed 1–22–24; 8:45 am]

BILLING CODE 6700–01–P

**FEDERAL FINANCIAL INSTITUTIONS
EXAMINATION COUNCIL****[Docket No. AS24–03]****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 Webex.

Date: January 17, 2024.

Time: 10:45 a.m. ET.

Action and Discussion Item

Personnel Matter

The ASC convened a Special Closed Meeting to discuss a personnel matter. No action was taken by the ASC.

James R. Park,

Executive Director.

[FR Doc. 2024–01259 Filed 1–22–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM**Change in Bank Control Notices;
Acquisitions of Shares of a Bank or
Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 6, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to

Comments.applications@chi.frb.org:

1. *Sue Ann McClaren, Denver, Colorado*; to retain voting shares of Easton Bancshares, Inc., and thereby indirectly retain voting shares of Community Bank of Easton, both of Easton, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–01159 Filed 1–22–24; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION**[File No. 202 3088]****InMarket Media LLC; Analysis of
Proposed Consent Order To Aid Public
Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 22, 2024.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write “InMarket Media LLC; File No. 202 3088” 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, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex M), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Gorana Neskovic (202–326–2322), Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or

before February 22, 2024. Write “InMarket Media LLC; File No. 202 3088” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “InMarket Media LLC; File No. 202 3088” 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 M), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include 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 sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by 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 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). 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 on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, 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 at <http://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws 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 February 22, 2024. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from InMarket Media LLC (“InMarket”). The proposed consent order (“Proposed Order”) has been placed on the public record for 30 days for receipt of public comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with the comments received, and will decide whether it should make final the Proposed Order or withdraw from the agreement and take appropriate action.

Respondent InMarket is a Delaware company with its headquarters in Texas. Respondent is a digital marketing platform and a data aggregator. Since approximately May 2010, InMarket has operated an advertising service that uses mobile device location data to deliver ads to consumers’ mobile devices.

InMarket collects and purchases mobile device location data and uses that data to allow advertisers to target particular groups of consumers. InMarket collects location data directly from mobile devices through its proprietary software development kit (“the InMarket SDK”). The InMarket SDK is incorporated into two mobile apps that InMarket owns and operates: CheckPoints, which offers shopping rewards for completing small tasks, and ListEase, which helps consumers create shopping lists. Respondent also makes

the InMarket SDK available to third-party app developers and it has been incorporated into more than 300 third-party apps.

InMarket uses the location data and other personal information it collects to group consumers, identified by mobile device identifiers, into advertising audiences, and then allows advertisers to target these audiences (e.g., “coffee lover,” “pet owner”). Advertisers may target audiences directly through InMarket (that is, the advertisements will appear on mobile devices through the InMarket SDK). They may also purchase “audiences” from InMarket and target their advertisements to these audiences on real-time bidding platforms.

When InMarket’s proprietary apps request consent to access location data, they state that the data will be used for the app’s own function (e.g., to earn extra shopping points or to receive a reminder about items on a shopping list when in the store), and do not disclose that they are collecting the data to target advertising, or that the data may be retained for up to five years. InMarket also does not monitor or keep records of whether the third parties that use the InMarket SDK properly disclose to users that location data will be shared with third parties to target advertising, or that it will be retained for up to five years. InMarket thus fails to obtain informed consumer consent in its proprietary apps, CheckPoints and ListEase, and fails to verify that the third-party apps that incorporate InMarket’s SDK obtain informed consumer consent.

In addition to failing to obtain informed consent, InMarket has retained the collected data for up to five years—far longer than necessary to accomplish the purpose of collection. This unreasonable retention period, combined with InMarket’s comprehensive data collection practices, significantly increases the risk that the sensitive location data would be disclosed or misused, causing harm to consumers.

The Commission’s proposed four-count complaint alleges that Respondent violated section 5(a) of the FTC Act by (1) unfairly collecting and using consumer location data from its own apps, (2) unfairly collecting and using consumer location data from third party apps, (3) unfairly retaining consumer location data, and (4) deceptively failing to disclose use of location data.

With respect to the first count, the proposed complaint alleges that Respondent failed to fully disclose to users of the InMarket apps the purposes for which the users’ location data would

be used, such as the creation of consumer profiles and targeting for advertising. As a result, the proposed complaint alleges that Respondent caused or is likely to cause consumers substantial injury in the form of loss of privacy about their day-to-day movements, and a related increased risk of disclosure of such sensitive data.

With respect to the second count, the proposed complaint alleges Respondent collected location data from third-party apps that incorporate its SDK without taking reasonable steps to verify that the consumers were informed that their data would be shared with InMarket and used to develop consumer profiles to target them with advertising. The proposed complaint alleges that this collection of location data without consent verification caused substantial injury to consumers in the form of loss of privacy about their day-to-day movements, and a related increased risk of disclosure of such sensitive data. InMarket's primary mechanism for ensuring that consumers have provided appropriate consent is through contractual requirements with its third-party app partners. However, contractual provisions, without additional safeguards, are insufficient to protect consumers' privacy.

With respect to the third count, the proposed complaint alleges that Respondent retained detailed, sensitive information about consumers' movement for up to five years, which is longer than reasonably necessary to fulfill the purpose for which that information was collected. As a result, the proposed complaint alleges that such retention caused or is likely to cause substantial injury in the form of loss of privacy about day-to-day movements of consumers, and an increased risk of disclosure of such sensitive data.

With respect to the fourth count, the proposed complaint alleges that Respondent failed to inform consumers about its location data use practices. Respondent represented that its apps would use the user's location information for shopping-related activities such as earning extra points when walking into stores. Instead, InMarket has supplemented that data with information about users it purchased from other sources, shared that information with third parties for advertising purposes, and has used that information to develop predictions about consumer behavior and characteristics. The proposed complaint alleges that these facts would be material to consumers when deciding whether to grant location permissions to

InMarket's apps, and their omission was therefore a deceptive act or practice.

Summary of Proposed Order With Respondent

The Proposed Order contains injunctive relief designed to prevent Respondent from engaging in the same or similar acts or practices in the future.

Geolocation data can vary significantly in its precision. The privacy concerns posed by the proposed complaint relate to more precise location data—that is, location data that could be used to identify specific locations a consumer visits. As a result, the Proposed Order is limited to location data that identifies consumers' locations in a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet.

Provision I prohibits Respondent from misrepresenting (1) the extent to which it collects, maintains, uses, discloses, or deletes location data, and (2) the extent to which such data is deidentified. Provision II prohibits Respondent from selling or licensing precise location data in exchange for any valuable consideration.

Provision III prohibits Respondent from selling, licensing, transferring, or sharing, any product or service that categorizes or targets consumers based on sensitive location data. Sensitive locations are defined as those locations associated with: (1) sexual and reproductive health providers, offices of mental health practitioners and related mental health and substance abuse facilities, offices of oncologists and pediatricians; (2) religious organizations; (3) correctional facilities; (4) labor union offices; (5) locations held out to the public as predominantly providing education or childcare services to minors; (6) locations held out to the public as predominantly providing services to LGBTQ+ individuals; (7) locations held out to the public as predominantly providing services based on racial or ethnic origin; (8) locations held out to the public as providing temporary shelter or social services to homeless, survivors of domestic violence, refugees, or immigrants; or (9) locations of public gatherings of individuals during political or social demonstrations, marches and protests.

Provision IV requires that Respondent implement and maintain a sensitive location data program to develop a comprehensive list of sensitive locations and to prevent the use, sale, license, transfer, or disclosure of sensitive location data.

Provision V prohibits Respondent from collecting, using, and disclosing

location data from its apps (1) without a record documenting the consumer's affirmative express consent obtained prior to the collection or use of location data, and (2) unless consumers receive a clear and conspicuous reminder every six months about location data being collected.

Provision VI requires that Respondent design and implement an SDK supplier assessment program to help ensure that consumers have provided consent for the collection and use of location data obtained by Respondent through its SDK. Under this program, Respondent must conduct initial assessments of all their SDK data suppliers within 30 days of entering into a data sharing agreement, or within 30 days of the initial date of data collection. The program also requires that Respondent confirm that consumers provide consent and create and maintain records of SDK suppliers' assessment responses. Finally, Respondent must cease from using, selling, or disclosing location data for which consumers do not provide consent.

Provision VII requires that Respondent provide a simple, easily-located means for consumers to withdraw any consent provided and Provision VIII requires that Respondent cease collecting location data within 7 days after Respondent receives notice that the consumer has withdrawn their consent. Provision IX also requires Respondent to provide a simple, easily-located means for consumers to request that Respondent deletes location data that Respondent previously collected and to delete the location data within 30 days of receipt of such request unless a shorter period for deletion is required by law.

Provision X requires that Respondent (1) document and adhere to a retention schedule for the covered information it collects from consumers, including the purposes for which it collects such information, the specific business needs, and an established timeframe for its deletion, and (2) prior to collecting or using new type of information related to consumers that was not previously collected, and is not described in its retention schedule, update its retention schedule.

Provision XI requires Respondent to provide a notice to each consumer whose location data was collected through the Respondent's apps without Affirmative Express Consent, either via email or in the app itself, notifying the consumer about InMarket's settlement with the Commission.

Provision XII requires that Respondent delete or destroy all historic location data. Respondent has the

option to retain historic location data if it has obtained affirmative express consent or it ensures that the historic location data is deidentified or rendered non-sensitive. Provision XIII requires Respondent to establish and implement, and thereafter maintain, a comprehensive privacy program that protects the privacy of consumers' personal information.

Provisions XIV–XVII are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondent to provide information or documents necessary for the Commission to monitor compliance.

Provision XVIII states that the Proposed Order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the Proposed Order, and it is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify the Proposed Order's terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2024–01269 Filed 1–22–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control; Amended Notice of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces an amendment to the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC).

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of Board of Scientific Counselors, National Center for Injury Prevention and Control; January 11, 2024, first session from 10 a.m. to 12:05 p.m., EST (OPEN), and second session from 1 p.m. to 4:30 p.m., EST (CLOSED), in the original **Federal Register** notice.

The notice of the virtual meeting was published in the **Federal Register** on November 17, 2023, 88 FR 80305.

The meeting notice is being amended. The closed session that was scheduled for January 11, 2024, from 1 p.m. to 4:30 p.m., EST, has been canceled. The notice is being amended to update the **SUMMARY, DATES, ADDRESSES,** and **SUPPLEMENTARY INFORMATION** and should read as follows:

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC). This meeting is open to the public. Time will be available for public comment.

DATES: The meeting will be held on January 11, 2024, from 10 a.m. to 12:05 p.m., EST. The public comment period will be from 11:45 a.m. to 12 p.m., EST.

ADDRESSES: Webinar, Atlanta, Georgia. All participants must register by using the following link to attend the meeting: <https://cdc.zoomgov.com/meeting/register/vJltf-igpjopGsXuGUhsdIIomRCB2yx509k>.

SUPPLEMENTARY INFORMATION:

Purpose: The Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC) will: (1) conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes and strategies related to the prevention of injury, overdose, and violence; (2) assist States and other entities in preventing intentional and unintentional injuries, and to promote health and well-being; and (3) make recommendations of grants and cooperative agreements for research and prevention activities related to injury, overdose, and violence. The BSC, NCIPC makes recommendations regarding policies, strategies, objectives, and priorities and reviews progress toward injury, overdose, and violence prevention. The Board also provides advice on the appropriate balance of intramural and extramural research and provides guidance on the needs, structure, progress, and performance of intramural programs. Further, the Board provides guidance on extramural scientific program matters. Additionally, the Board provides second-level scientific and programmatic review of applications for research grants, cooperative agreements, and training grants related to injury,

overdose, and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Board also provides feedback and input on strategic plans, resources, and priority publications related to injury, overdose, and violence prevention.

Matters To Be Considered: The meeting will include a discussion on the updated Intimate Partner Violence Research Priorities. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT:

Christopher R. Harper, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S–1069, Atlanta, Georgia 30341. Telephone: (404) 718–8330; Email: ncipcbosc@cdc.gov.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–01165 Filed 1–22–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–1071; Docket No. CDC–2024–0002]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction

Act of 1995. This notice invites comment on a proposed information collection project titled Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. This data collection is designed to help CDC collect routine customer feedback on agency service delivery.

DATES: CDC must receive written comments on or before March 25, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0002 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of

information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB Control No. 0920–1071, Exp. 5/31/2024)—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC/NCEZID is seeking a three-year Extension of OMB Control No. 0920–1071 to continue collecting routine customer feedback on agency service delivery. Executive Order 12862 directs

Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention (CDC) (hereafter the Agency) seeks to obtain OMB approval of a Generic Clearance to collect qualitative feedback on our service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Since getting approval in May 2021, NCEZID has utilized the 0920–1071 mechanism 15 separate times. In this Extension, CDC requests OMB approval for an estimated 3,850 annual burden hours. There is no cost to respondents other than the time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General public	Online surveys	1,500	1	30/60	750
	Focus groups	800	1	2	1,600
	In-person surveys	1,000	1	30/60	500
	Usability testing	1,500	1	30/60	750
	Customer comment cards	1,000	1	15/60	250
Total .....	.....	.....	.....	.....	3,850

Jeffrey M. Zirger,
*Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.*
[FR Doc. 2024–01152 Filed 1–22–24; 8:45 am]
BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

**Administration for Children and
Families**

**Proposed Information Collection
Activity; Generic Clearance for
Financial Reports Used for ACF
Mandatory Grant Programs (Office of
Management and Budget #: 0970–0510)**

AGENCY: Administration for Children
and Families, U.S. Department of Health
and Human Services.
ACTION: Request for public comments.

SUMMARY: The Administration for
Children and Families (ACF) proposes
to extend approval of the existing
overarching generic clearance for
Financial Reports used for ACF
Mandatory Grant Programs (OMB
#0970–0510) as well as all information
collections currently approved under
the overarching generic. There are no
changes to the proposed types of
information collection or uses of data as
described in the overarching generic,
and there are no changes proposed to
currently approved information
collections for which we are requesting
an extension. Burden estimates for the
next 3 years have been adjusted based
on use to date.

DATES: *Comments due within 60 days of
publication.* In compliance with the
requirements of the Paperwork
Reduction Act of 1995, ACF is soliciting
public comment on the specific aspects
of the information collection described
above.

ADDRESSES: You can obtain copies of the
proposed collection of information and
submit comments by emailing
infocollection@acf.hhs.gov. Identify all

requests by the title of the information
collection.

SUPPLEMENTARY INFORMATION:
Description: ACF programs require
detailed financial information from their
grantees that allows ACF to monitor
various specialized cost categories
within each program, to closely manage
program activities, and to have
sufficient financial information to
enable periodic thorough and detailed
audits.

The information included on the
standard Federal Financial Report Form
(SF–425; OMB #4040–0014) provides
only minimal, bare-bones, non-program
specific financial information
insufficient for these purposes. This
generic clearance allows ACF programs
to efficiently develop and receive
approval for financial reports that are
tailored to specific funding recipients
and the associated needs of the program.
This umbrella generic is a mechanism
that is available to all ACF mandatory
grant programs to use to obtain OMB
approval of financial forms. Currently
only a small number of ACF’s
mandatory grant program financial
forms are covered under this umbrella;
it does *not* cover all ACF mandatory
grant program financial forms. Program
offices use the information collected
under this generic information
collection to:

- Monitor program operations and
prepare technical assistance and
guidance as needed
- Assess the effect of program changes
and make informed decision
- Assist in the computation of the grant
awards issued to each program’s
grantees
- Assist in the computation of the Child
Support Services program’s annual
incentive payments
- Determine that child support
collections are being properly
distributed (Child Support Services
Program only)
- Ensure funding recipients are meeting
funding requirements established by
Congress
- Produce annual financial and
statistical reports as may be required

by Congress and respond to periodic
detailed inquiries from Congress

ACF may require an information
collection approved under this generic
from funding recipients to obtain or
retain benefits.

Prior to a new form being submitted
for review under this umbrella generic,
ACF will publish a notice in the **Federal
Register** announcing the agency’s
intention to request an OMB review of
the form and providing a 14-day period
for public comment on that specific
request. ACF will review any comments
received and address them as
appropriate. ACF will provide a copy of
any comments received and will
provide a description of how comments
were considered in the submission form
along with the request package for the
individual collection. ACF will then
follow standard OMB requirements for a
generic information collection and
submit a generic information collection
request for each individual data
collection activity under this generic
clearance. Each request will include the
individual form(s) and instructions, a
summary of any comments received,
and a short overview of the proposed
purpose and use of the data collected.
OMB should review requests within 10
days of submission.

Respondents: ACF-funded mandatory
grant programs.

Annual Burden Estimates

Find currently approved information
collections here: [https://
www.reginfo.gov/public/do/PRAICList?
ref_nbr=202308-0970-008](https://www.reginfo.gov/public/do/PRAICList?ref_nbr=202308-0970-008). The request
to OMB will include an extension
request for approved information
collections that are planned to continue
beyond spring 2024. The current list of
ongoing collections follows, but more
collections may be approved prior to
submission of the extension request to
OMB. We will update the list in the
subsequent **Federal Register** notice, if
needed.

Burden Estimates—Ongoing Requests

Study	Number of respondents	Number of responses per respondent	Average burden hours per response	Burden hours
ACF–196P, TANF Pandemic Emergency Assistance Fund (PEAF) Financial Report for States, Territories and Tribes	137	1	6	822
Child Care and Development Fund (CCDF) ACF–696 Financial Report for States and Territories	56	4	5	1,120
Child Care and Development Fund (CCDF) ACF–696T Financial Report for Tribal Grantees	221	1	7	1,547
Child Support Services Program Financial Reporting Forms (OCSE–34 and OCSE–396)	168	4	14	9,408
Form CB–496: Title IV–E Programs Quarterly Financial Report	67	4	25	6,700

Study	Number of respondents	Number of responses per respondent	Average burden hours per response	Burden hours
Refugee Cash and Medical Assistance Federal Financial Report (ORR-2) Supplemental Data Collection	66	1	1.67	110
Refugee Support Services Federal Financial Report (SF-425) Supplemental Data Collection	53	4	4	848
Totals	768	Avg: 2.7	Avg: 8.9	20,555

Burden Estimates—New Requests

Based on use of this generic, we have revised burden estimates for the next 3 years.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Burden hours
Mandatory Grant Financial Reports	1,200	3	9	32,400

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2024-01206 Filed 1-22-24; 8:45 am]

BILLING CODE 4184-88-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-N-1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to

award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that the supplemental application (Supplement-35) for COSENTYX (secukinumab), approved June 16, 2020, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-1394, email: Cathryn.Lee@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that the supplemental application (Supplement-35) for COSENTYX (secukinumab) meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseases/Conditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about COSENTYX (secukinumab), go to the "Drugs@FDA" website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-01164 Filed 1-22-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-D-5430]

Characterization of Metallic Coatings and/or Calcium Phosphate Coatings on Orthopedic Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Characterization of Metallic Coatings and/or Calcium Phosphate Coatings on Orthopedic Devices." This draft guidance document provides recommendations for premarket submissions for orthopedic devices that contain metallic coatings and/or calcium phosphate coatings on the surface. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by March 25, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2023-D-5430 for "Characterization of Metallic Coatings and/or Calcium Phosphate Coatings on Orthopedic Devices." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential

with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled "Characterization of Metallic Coatings and/or Calcium Phosphate Coatings on Orthopedic Devices" to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Limin Sun, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4430, Silver Spring, MD 20993-0002, 301-796-7056.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document provides recommendations for premarket submissions for orthopedic devices that contain metallic coatings and/or calcium phosphate coatings on the surface. The recommendations in this document are applicable to class II and class III devices intended for orthopedic applications that contain metallic and/or calcium phosphate coatings. Specifically, this draft guidance addresses the characterization of the following coatings on orthopedic devices: (1) a metallic coating, which can be manufactured using thermal spray (e.g., plasma spray), sintering (e.g., sintering of powders, beads, or fiber mesh pad), chemical vapor deposition/infiltration, physical vapor deposition (e.g., ionic plasma deposition), additive manufacturing (e.g., electron beam manufacturing, selective laser sintering), or other methods; (2) a calcium phosphate coating, which can be manufactured by plasma spray, solution precipitation, electrochemical deposition, or other methods; and (3) a metallic and calcium phosphate dual coating, which can be manufactured using one or more of the above methods.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Characterization of Metallic Coatings and/or Calcium Phosphate Coatings on Orthopedic Devices." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>. This guidance document is also available at <https://www.regulations.gov> and <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>. Persons unable to download an electronic copy of "Characterization of Metallic Coatings and/or Calcium Phosphate Coatings on Orthopedic Devices" may send an email request to CDRH-Guidance@fda.hhs.gov to receive

an electronic copy of the document. Please use the document number GUI00020051 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to

review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
812	Investigational Device Exemption	0910–0078
“Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program”.	Q-submissions and Early Payor Feedback Request Programs for Medical Devices.	0910–0756
800, 801, 809 and 830	Medical Device Labeling Regulations; Unique Device Identification.	0910–0485
58	Good Laboratory Practice (GLP) Regulations for Nonclinical Laboratory Studies.	0910–0119

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01158 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that the supplemental application (Supplement-1) for ZEPOSIA (ozanimod), approved May 27, 2021, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: Cathryn.Lee@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease

priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that the supplemental application (Supplement-1) for ZEPOSIA (ozanimod) meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about ZEPOSIA (ozanimod), go to the “Drugs@FDA” website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01160 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–5746]

Agency Information Collection Activities; Proposed Collection; Comment Request; Record Retention Requirements for the Soy Protein and Reduced Risk of Coronary Heart Disease Health Claim

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is

announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the record retention requirements for the soy protein/coronary heart disease (CHD) health claim.

DATES: Either electronic or written comments on the collection of information must be submitted by March 25, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 25, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or

anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2023-N-5746 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Record Retention Requirements for the Soy Protein and Reduced Risk of Coronary Heart Disease Health Claim." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and

contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and

assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Record Retention Requirements for the Soy Protein and Reduced Risk of Coronary Heart Disease Health Claim—21 CFR 101.82

OMB Control Number 0910-0428—Extension

Section 403(r)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(3)(A)) provides for the use of food label statements characterizing a relationship of any nutrient of the type required to be in the label or labeling of the food to a disease or a health-related condition only where that statement meets the requirements of the regulations issued by the Secretary of Health and Human Services to authorize the use of such a health claim. Section 101.82 (21 CFR 101.82) of our regulations authorizes a health claim for food labels about soy protein and the risk of CHD. Accordingly, we established this information collection in support of the regulation.

This information collection enables us to review food labeling ingredient information to determine the basis of soy protein/CHD health claims. Respondents are required to retain records for FDA inspection regarding calculation of the ratio of soy protein to total protein in a food when that food bears a soy protein/CHD health claim.

While we are currently proposing to revoke the regulation (RIN 0910-AH43) as announced in the **Federal Register** of October 31, 2017 (82 FR 50324), the regulation remains in effect. Once we finalize the proposed rule, the associated information collection requirements under this OMB control number will be revoked. Until such time and in accordance with the PRA, we retain our currently approved burden estimate for this information collection.

Description of Respondents:

Respondents include businesses engaged in the manufacture of foods containing soy and other proteins that bear soy protein/CHD health claims. Respondents to the information collection are from the private sector (for-profit businesses).

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR Section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
101.82; Soy protein/CHD health claim	25	1	25	1	25

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The records currently required to be retained under § 101.82(c)(2)(ii)(B) are the records, *e.g.*, the formulation or recipe, that a manufacturer has and maintains as a normal course of its doing business. Thus, the burden to the food manufacturer is limited to assembling and retaining the records.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: January 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01239 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0073]

Agency Information Collection Activities; Proposed Collection; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, us, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of our requirements for food irradiation processors.

DATES: Either electronic or written comments on the collection of information must be submitted by March 25, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 25, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2018–N–0073 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Irradiation in the Production, Processing, and Handling of Food.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the

docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites

comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Irradiation in the Production, Processing, and Handling of Food
OMB Control Number 0910–0186—Extension

This information collection supports FDA regulations. Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation by FDA under the food additive premarket approval provisions. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To ensure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum (or minimum and maximum) energy of the

emitted radiation. Section 179.21(b)(2) requires that the label or accompanying labeling bear adequate directions for installation and use and a statement supplied by us that indicates maximum dose of radiation allowed. Section 179.26(c) requires that the label or accompanying labeling bear a logo and a radiation disclosure statement. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by our inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. We cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

Description of Respondents: Respondents to the information collection are businesses engaged in the irradiation of food.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
179.25(e), large processors	4	300	1,200	1	1,200
179.25(e), small processors	4	30	120	1	120
Total .....	.....	.....	.....	.....	1,320

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. Our estimate of the recordkeeping burden under § 179.25(e) is based on our experience regulating the safe use of radiation as a direct food additive. The number of firms who process food using irradiation is extremely limited. We estimate that there are four irradiation plants whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Four other firms

also irradiate small quantities of food. We estimate that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on four facilities devoting 100 percent of their business to food irradiation, and four facilities devoting 10 percent of their business to food irradiation.

No burden has been estimated for the labeling requirements in §§ 179.21(b)(1), 179.21(b)(2), and 179.26(c) because the disclosures are supplied by FDA. Under 5 CFR 1320.3(c)(2), the public

disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not subject to review by OMB under the PRA.

Dated: January 18, 2024.
Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2024–01240 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket Nos. FDA–2023–N–2562; FDA–2023–N–2707; FDA–2023–N–1005; FDA–2023–N–2459; FDA–2023–N–1029; and FDA–2023–N–3007]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The following is a list of FDA information

collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at <https://www.reginfo.gov/public/do/PRAMain>. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Temporary Marketing Permit Applications	0910–0133	1/31/2027
State Petitions for Exemption from Preemption	0910–0277	1/31/2027
FDA Focus Groups and Interviews	0910–0497	1/31/2027
Product Jurisdiction and Combination Products	0910–0523	1/31/2027
Cosmetic Labeling and Cosmetic Registration	0910–0599	1/31/2027
Registration of Human Drug Compounding Outsourcing Facilities under Section 503B of the FDCA and Associated Fees under Section 744K	0910–0776	1/31/2027

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01153 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA–2023–N–3848]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by February 22, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to [https://](https://www.reginfo.gov/public/do/PRAMain)

www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910–0409. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring—21 CFR Part 315**OMB Control Number 0910–0409—Extension**

This information collection supports our regulations in part 315 (21 CFR part 315) that require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of (1) a new diagnostic radiopharmaceutical or (2) a new indication for use of an approved

diagnostic radiopharmaceutical. Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to evaluate properly the safety and effectiveness profiles of such radiopharmaceuticals.

The information, which is usually submitted as part of a new drug application (NDA) or biologics license application or as a supplement to an approved application typically includes, but is not limited to, nonclinical and clinical data on the pharmacology; toxicology; adverse events; radiation safety assessments; and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50) and have been approved under OMB control number 0910–0001.

In table 1, row 1, we estimate the annual reporting burden for preparing the safety and effectiveness sections of an application. This estimate does not include the time needed to conduct studies and clinical trials or other research from which the reported information is obtained.

Based on past submissions of human drug applications, new indication supplements for diagnostic radiopharmaceuticals, or both, we estimate that three submissions will be received annually from three applicants and that 2,000 hours would be spent preparing the portions of the application that would be affected by this

information collection. We further estimate the total time needed to prepare complete applications for diagnostic radiopharmaceuticals as approximately 6,000 hours. This information collection does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours, because safety and effectiveness information is already required in § 314.50 and has been approved under OMB control number 0910–0001. In fact, clarification of our criteria for the evaluation of diagnostic radiopharmaceuticals in this information collection is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles by enabling manufacturers to tailor information

submissions and avoid unnecessary clinical trials.

In table 1, row 2, we estimate the annual reporting burden for preparing the safety and effectiveness sections of a supplement to an approved application. This estimate does not include the time needed to conduct studies and clinical trials or other research from which the reported information is obtained.

Based on past submissions of human drug applications, new indication supplements for diagnostic radiopharmaceuticals, or both, we estimate that one submission will be received annually. We estimate the total time needed to prepare complete applications for supplements to new applications for diagnostic radiopharmaceuticals as approximately between 500 and 1,000 hours. We calculated the median of this estimate to arrive at approximately 750 hours. We

further estimate that the total time needed to prepare the portions of the application that would be affected by this information collection as 750 hours. As previously stated, this information collection does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 750 hours because safety and effectiveness information is already required in § 314.50 and has been approved under OMB control number 0910–0001.

In the **Federal Register** of October 12, 2023 (88 FR 70667), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR NDAs AND SUPPLEMENTS TO APPROVED NDAs FOR DIAGNOSTIC RADIOPHARMACEUTICALS¹

Manufacturers' activity (21 CFR section)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
NDAs (§§ 315.4, 315.5, and 315.6)	3	1	3	2,000	6,000
Supplements to Approved NDAs (§§ 315.4, 315.5, and 315.6)	1	1	1	750	750
Total .....	.....	.....	.....	.....	6,750

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 11 responses with a corresponding decrease of 12,000 burden hours. We attribute this adjustment to a decrease in the number of submissions for NDAs for diagnostic radiopharmaceuticals and new indication supplements for diagnostic radiopharmaceuticals we received over the past few years.

Dated: January 18, 2024.

Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2024–01237 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that XYWAV (calcium, magnesium,

potassium, and sodium oxybates), approved July 21, 2020, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: *Cathryn.Lee@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that XYWAV (calcium, magnesium, potassium, and sodium oxybates) meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about XYWAV (calcium, magnesium, potassium, and sodium oxybates), go to the “Drugs@FDA” website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01156 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–5656]

Agency Information Collection Activities; Proposed Collection; Comment Request; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing State enforcement notifications.

DATES: Either electronic or written comments on the collection of information must be submitted by March 25, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 25, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–N–5656 for “Agency Information Collection Activities; Proposed Collection; Comment Request; State Enforcement Notifications.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential

with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

State Enforcement Notifications—21 CFR 100.2(d)
OMB Control Number 0275—Extension

This information collection supports Agency regulations. Specifically, section 310(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 337(b)) authorizes a State to enforce certain sections of the FD&C Act in their own name and within their own

jurisdiction. However, before doing so, a State must provide notice to FDA according to § 100.2 (21 CFR 100.2). The information required in a letter of notification under § 100.2(d) enables us to identify the food against which a State intends to take action and to advise that State whether Federal enforcement action against the food has been taken or is in process. With certain narrow exceptions, Federal enforcement action precludes State action under the FD&C Act.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
100.2(d); notification	1	1	1	10	10

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

The estimated reporting burden for § 100.2(d) is minimal because enforcement notifications are seldom used by States. During the last 3 years, we have not received any new enforcement notifications; therefore, we estimate that one or fewer notifications will be submitted annually. Although we have not received any new enforcement notifications in the last 3 years, these information collection provisions should be extended to provide for the potential future need of a State government to submit enforcement notifications informing us when it intends to take enforcement action under the FD&C Act against a particular food located in the State.

Dated: January 18, 2024.
Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2024–01238 Filed 1–22–24; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0008]

Request for Nominations From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on the Cellular, Tissue, and Gene Therapies Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Cellular, Tissue, and Gene Therapies Advisory Committee (CTGTAC) for the Center for Biologics Evaluation and Research notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative(s) to serve on the CTGTAC. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests

must send a letter stating that interest to FDA by February 22, 2024 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by February 22, 2024.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent via email to Cicely Reese or Marie DeGregorio (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives must be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal at: <https://www.accessdata.fda.gov/scripts/FACTRS/Portal/FACTRS/index.cfm>. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA’s website at: <https://www.fda.gov/AdvisoryCommittees/default.htm>.

FOR FURTHER INFORMATION CONTACT: Cicely Reese or Marie DeGregorio, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1232, Silver Spring, MD 20993–0002, 240–620–9987, email: CBERCTGTAC@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative(s) to the following advisory committee:

I. Cellular, Tissue, and Gene Therapies Advisory Committee

The Committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies, and xenotransplantation products, which are intended for transplantation, implantation, infusion, and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair, or replacement of tissues for various conditions. The Committee also considers the quality and relevance of FDA's research program, which provides scientific support for the regulation of these products, and makes appropriate recommendations to the Commissioner of Food and Drugs.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter via email stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a notification to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current résumés. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate, and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Nomination must include a current, complete résumé or curriculum vitae for each nominee, including current business address and telephone number, email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). Nominations must also specify

the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*) and 21 CFR part 14, relating to advisory committees.

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01154 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that VEOZAH (fezolinetant), approved May 12, 2023, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: Cathryn.Lee@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that VEOZAH (fezolinetant) meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about VEOZAH (fezolinetant), go to the “Drugs@FDA” website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01163 Filed 1–22–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; The National Health Service Corps Loan Repayment Programs

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than March 25, 2024.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443-3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The National Health Service Corps Loan Repayment Programs OMB No. 0915-0127—Revision.

Abstract: The National Health Service Corps (NHSC) Loan Repayment Program (LRP) was established to assure an adequate supply of trained primary care health professionals to provide services in Health Professional Shortage Areas (HPSAs) of the United States with the greatest need. The NHSC Substance Use Disorder Workforce LRP and the NHSC Rural Community LRP were established to recruit and retain a health professional workforce with specific training and credentials to provide evidence-based substance use disorder treatment in HPSAs. Under these programs, HHS agrees to repay the qualifying educational loans of selected primary care health professionals. In

return, the health professionals agree to serve for a specified period of time in an NHSC-approved site located in a federally-designated HPSA approved by the Secretary of HHS for LRP participants.

The forms used by each LRP include the following: (1) the NHSC LRP Application, (2) the Authorization for Disclosure of Loan Information Form, (3) the Privacy Act Release Authorization Form, and, if applicable, (4) the Verification of Disadvantaged Background Form, (5) the Private Practice Option Form, and (6) the NHSC Spanish Language Assessment Proficiency Test Form. The first four of the NHSC LRP Forms collect information that is needed for selecting participants and repaying qualifying educational loans. The Private Practice Option and Spanish Language Assessment forms are needed to collect information from applicants who wish to be considered for those options.

Need and Proposed Use of the Information: The need and proposed use of this information collection is to assess an LRP applicant's eligibility and qualifications for the LRP, and to determine LRP applicants' Spanish language proficiency if relevant to their

application, and to obtain information for NHSC site applicants. The NHSC LRP application asks for personal, professional, and financial/loan information.

Likely Respondents: Likely respondents include licensed primary care medical, dental, and behavioral health providers who are employed or seeking employment and are interested in serving underserved populations.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
NHSC LRP Application	9,020	1	9,020	1.00	9,020
Authorization for Disclosure of Loan Information Form	7,150	1	7,150	0.10	715
Privacy Act Release Authorization Form	303	1	303	0.10	30
Verification of Disadvantaged Background Form	660	1	660	0.50	330
Private Practice Option Form	330	1	330	0.10	33
NHSC Comprehensive Behavioral Health Services Checklist	4,400	1	4,400	0.13	572
NHSC Spanish Language Assessment Proficiency Test Form	3,006	1	3,006	0.50	1,503
NHSC Site Application (including recertification)	4,070	1	4,070	0.50	2,035
Total	28,939	.....	28,939	.....	14,238

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024-01224 Filed 1-22-24; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****Extension of Comment Period for the Notice and Request for Comments on the Implications of Access and Benefit Sharing (ABS) Commitments/Regimes and Other Proposed Commitments Being Considered Under a WHO Convention, Agreement or Other International Instrument on Pandemic Prevention, Preparedness and Response**

AGENCY: Office for Global Affairs, Office of the Secretary, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: This document extends the comment period for the Notice and Request for Comments on the Implications of Access and Benefit Sharing (ABS) Commitments/Regimes and Other Proposed Commitments Being Considered Under a WHO Convention, Agreement or Other International Instrument on Pandemic Prevention, Preparedness and Response that appeared in the December 22, 2023, issue of the **Federal Register**. The comment period for the notice, which is due to close on January 22, 2024, is extended to January 31, 2024.

DATES: The comment period for the notice published December 22, 2023, at 88 FR 88637, is extended. To be assured consideration, comments must be received no later than 5 p.m. Eastern time January 31, 2024.

ADDRESSES: Written comments should be emailed to OGA.RSVP@hhs.gov with the subject line "Written Comment Re: Implications of Access and Benefit Sharing (ABS) Commitments/Regimes and Other Proposed Commitments in the WHO Pandemic Agreement" by January 31, 2024. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Susan Kim, Office for Global Affairs, Office of the Secretary, HHS, Room (639H) Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: *Background:* The original notice with full details is available at <https://www.federalregister.gov/documents/2023/12/22/2023-28341/notice-and-request-for-comments-on-the-implications-of-access-and-benefit-sharing-abs>.

In December 2021, WHO's Member States decided at a Special Session of the World Health Assembly to establish

an intergovernmental negotiating body (INB), representing all regions of the world, to draft and negotiate a WHO convention, agreement, or other international instrument on pandemic prevention, preparedness, and response. More information about the INB process can be found here: <https://inb.who.int/home/inb-process>. The INB currently intends to submit its outcome to the Seventy-seventh World Health Assembly in May 2024.

The United States has expressed support for the development of an international instrument to protect the world from pandemic health threats now and in the future, and in a more rapid and equitable manner. Full details on the negotiating text and the outcomes sought by the United States are available at <https://www.federalregister.gov/documents/2023/12/22/2023-28341/notice-and-request-for-comments-on-the-implications-of-access-and-benefit-sharing-abs>.

Purpose: The U.S. Department of Health and Human Services (HHS) and the Department of State are charged with co-leading the U.S. delegation to the Intergovernmental Negotiating Body (INB) to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness, and response.

Specific topics and questions: Stakeholders are invited to provide comments on any and all issues raised by the negotiating text, including potential vehicles and means for implementation of commitments to which the U.S. may subscribe. To the extent commenters choose to comment on specific provisions of the negotiating text, it is helpful to reference any articles or sub-articles being addressed.

To provide additional time for interested parties to consider and comment on the negotiating text, the Department is extending the comment period for all comments through January 31, 2024.

Susan Kim,

Principal Deputy Assistant Secretary, Office of Global Affairs, Department of Health and Human Services.

[FR Doc. 2024-01275 Filed 1-19-24; 8:45 am]

BILLING CODE 4150-38-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard**

[Docket No. USCG-2023-0924]

National Offshore Safety Advisory Committee; March 2024 Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The National Offshore Safety Advisory Committee (Committee) will conduct a series of meetings over 2 days in New Orleans, LA to discuss matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the United States Coast Guard. All meetings will be open to the public.

DATES: *Meetings:* The National Offshore Safety Advisory Committee's subcommittees will meet on Tuesday, March 12, 2024, from 12:30 p.m. to 3:30 p.m. Central Daylight Time (CDT). These subcommittee meetings will be for 90 minutes each and will start with the Subchapter N subcommittee, from 12:30 p.m. to 2 p.m. (CDT); and then the SEACOR POWER subcommittee from 2 p.m. to 3:30 p.m. (CDT).

The full Committee will meet on Wednesday, March 13, 2024, from 8 a.m. to 5 p.m. (CDT). Please note these meetings may close early if the subcommittees or the full Committee have completed their business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the meetings, submit your written comments no later than February 28, 2024.

ADDRESSES: The meetings will be held at the Renaissance New Orleans Pere Marquette French Quarter Area Hotel, 817 Common Street, New Orleans, LA 70112-2307, website Family-Friendly Hotel, New Orleans | Renaissance New Orleans French Quarter Area (marriott.com).

The National Offshore Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Mr. Patrick Clark at patrick.w.clark@uscg.mil or telephone at 571-607-8236 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meetings as time permits, but if

you want Committee members to review your comment before the meetings, please submit your comments no later than February 28, 2024. We are particularly interested in comments on the topics in the “Agenda” section below. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0924 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. If your material cannot be submitted using <https://www.regulations.gov>, email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2023–0924. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy and Security Notice, found via link on the homepage <https://www.regulations.gov>. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick W. Clark, Designated Federal Officer of the National Offshore Safety Advisory Committee, 2703 Martin Luther King Jr Ave SE, Stop 7509, Washington, DC 20593–7509, telephone 571–607–8236 or email patrick.w.clark@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C., ch. 10). The National Offshore Safety Advisory Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4192), and amended by section 8331 of the *Elijah E. Cummings Coast Guard Authorization Act of 2022* (Pub. L. 116–283) and is codified in 46

U.S.C. 15106. The Committee operates under the provisions of the *Federal Advisory Committee Act*, and 46 U.S.C. 15109. The Committee provides advice and recommendations to the Secretary of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the United States Coast Guard.

Agenda

Tuesday, March 12, 2024

Two subcommittees will meet to discuss the following task statements.

- (1) *Task Statement 02–2023*: 33 CFR Subchapter N
- (2) *Task Statement 01–2023*: SEACOR POWER

The task statements and other subcommittee information are located at Pages—Missions Content (uscg.mil).

Wednesday, March 13, 2024

The agenda for the March 13, 2024 Committee meeting is as follows:

- (1) Call to order.
- (2) Roll call and determination of quorum.
- (3) Installation of new Chair and Vice-Chair.
- (4) Adoption of previous meeting minutes and agenda.
- (5) Opening remarks.
- (6) Update/Final Report from the 33 CFR Subchapter N Subcommittee.
- (7) Update/Final Report from the SEACOR POWER Subcommittee.
- (8) New business.
- (9) Public comment period.
- (10) Closing remarks/plans for next meeting.
- (11) Adjournment of meeting.

A copy of all pre-meeting documentation will be available at: Pages—Missions Content (uscg.mil) no later than February 28, 2024. Alternatively, you may contact Mr. Patrick Clark as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

During the March 13, 2024, Committee meeting, a public comment period will be held from approximately 4:30 p.m. to 5 p.m. (CDT). Speakers are requested to limit their comments to 3 minutes. Please note that this public comment period may start before 4:30 p.m. (CDT) if all other agenda items have been covered and may end before 5 p.m. (CDT) if all of those wishing to comment have done so. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: January 17, 2024.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2024–01229 Filed 1–22–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0928]

Shipping Safety Fairways Along the Atlantic Coast

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent to prepare a Programmatic Environmental Impact Statement; notice of virtual and in-person scoping meetings; and request for comments.

SUMMARY: The Coast Guard, as the lead agency, announces its intent to prepare a Programmatic Environmental Impact Statement that will evaluate the potential environmental consequences of the Coast Guard’s Proposed Action to establish shipping safety fairways and other routing measures along the Atlantic Coast of the United States. While vessels are not required to use them, fairways are designed to keep traditional navigation routes free from fixed structures that could impact navigation safety and impede other shared offshore activities. This Notice of Intent is intended to solicit feedback on preliminary alternatives to help the Coast Guard narrow the scope of the PEIS. The Coast Guard intends to host three in-person meetings and one virtual scoping public meeting to provide additional information to the public and to solicit input on potential issues, concerns, and reasonable alternatives that should be considered in the PEIS.

DATES: Comments must be submitted at one of the public meetings or in writing to the online docket via <https://www.regulations.gov> on or before March 8, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0928 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Maureen Kallgren, Coast Guard;

telephone 202–372–1561, email Maureen.R.Kallgren2@uscg.mil.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments (or related material) on preliminary alternatives to help the Coast Guard narrow the scope of the PEIS. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0928 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this notice as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public Meetings

We plan to hold four public meetings, three of which will be held in person and one will be held virtually to solicit feedback. At these meetings, the Coast Guard will present an overview of the fairway development process and the environmental review process before holding a question-and-answer session with questions from the public.

The first in-person meeting will be from 6 p.m. to 8 p.m. on January 31 at White’s of Westport, 66 State Road, Westport, MA. The second in-person

meeting will be held from 6 p.m. to 8 p.m. on February 7 at the Georgia Southern University, Armstrong Campus Student Union, Ogeechee Theatre, 11935 Abercorn Street, Savannah, GA. The third in-person meeting will take place from 5 p.m. to 7 p.m. on February 12 at the Jordan Newby Branch at Broad Creek of the Norfolk Public Library, 1425 Norchester Ave, Norfolk, VA 23504. The fourth meeting will be held virtually on February 15 at <https://www.zoomgov.com/j/1616731053>, Meeting ID: 161 673 1053, or by telephone toll free at (833) 568–8864.

The public is encouraged to pre-register for these meetings using <https://www.zoomgov.com/meeting/register/vJlscuGopz0sHYZCW1ycTGmfycGxN5CCF7k>.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact the person named in the **FOR FURTHER INFORMATION CONTACT** section, above.

Background

This NOI briefly summarizes the Proposed Action, including the purpose and need and possible alternatives. As required by the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR 1500 through 1508, specifically 40 CFR 1502.3), a Federal agency must prepare an EIS if it is proposing a major Federal action. For this action, the Coast Guard has determined that a PEIS is the most appropriate type of environmental review because of the large geographic footprint of the proposed fairways. This process is designed to analyze the environmental consequences of each alternative to inform the agency’s decision.

Purpose and Need for the Proposed Action

The Ports and Waterways Safety Act authorizes the Coast Guard to take certain actions to advance port, harbor, and coastal facility safety and security. Specifically, 46 U.S.C. 70001 and 70034 authorize the Secretary of the department in which the Coast Guard is operating to promulgate regulations to establish reporting and operating requirements, surveillance and communications systems, routing systems, and shipping safety fairways. The Secretary has delegated this authority to the Commandant of the Coast Guard (Department of Homeland Security (DHS) Delegation 00170.1, Revision No. 01.3, paragraph (II)(70)).

The Coast Guard proposes to codify existing vessel traffic patterns into

shipping safety fairways, traffic separation schemes (TSSs), and precautionary areas along the Atlantic Coast of the United States. The Coast Guard recognizes current offshore development trends and other increased shared commercial activities on the Outer Continental Shelf (OCS) necessitate coordination between industries. We believe that OCS users are best served by the establishment of consistent and clearly defined navigation systems. More information on the proposed rules can be found in the Notice of Proposed Rulemaking (NPRM) 89 FR 3587.

Preliminary Proposed Action and Alternatives

Coast Guard has identified a Proposed Action and preliminary Alternatives for potential consideration in the PEIS. These alternatives, described below, represent the many potential forms that the fairways might ultimately take. These forms range from establishing no fairways at all to the extension of the proposed fairways to the outer limit of our authority on the OCS. This NOI is intended to solicit feedback on these alternatives to help the Coast Guard narrow the scope of the PEIS. Maps are available in the docket to help readers visualize the fairways and distinguish one alternative from another.

No Action

The Coast Guard will analyze a No-Action Alternative. For the purposes of this PEIS, the No-Action Alternative is defined as not establishing any fairways along the Atlantic Coast.

Alternative 1—Fairway Proposals Found in the Advanced Notice of Proposed Rulemaking (ANPRM)

Alternative 1 would establish shipping safety fairways consistent with those described in the 2020 ANPRM (85 FR 37034). This design is based on navigation safety corridors identified in the Atlantic Coast Port Access Route Study (Atlantic Coast PARS or ACPARS) prior to adaptations made based on further study and public input since 2020. In the ACPARS, the Coast Guard used Automatic Identification System (AIS) data and information from towing vessel and deep draft shipping organizations to identify traditionally used navigation routes.

The ACPARS identified nine primary navigation safety corridors as potentially suitable for designation as fairways. Three of these are primary navigation safety corridors along the coast and would most likely be used by smaller and slower moving vessels. Six offshore fairways are most likely to be

used by larger and faster moving deep-draft vessels. The fairways proposed in the ACPARS vary in width from 5 to 10 nautical miles in width.

Alternative 2 (Proposed Action): The Proposed Rule: Fairways and Other Routing Measures Proposed in the NPRM

Alternative 2 (Proposed Action) would establish shipping safety fairways, TSS, precautionary areas, and one fairway anchorage included in the Notice of Proposed Rule Making (NPRM). 89 FR 3587. In the Proposed Rule, the Coast Guard is proposing 18 fairways, three TSS extensions, four new precautionary areas, two modified precautionary areas and one fairway anchorage. The proposed fairways vary in width from 3 to 35 nautical miles in width.

Alternative 3—Proposed Rule Plus Gulf of Maine Fairways

Alternative 3 would establish shipping safety fairways included in the Proposed Rule with the addition of fairways in the Gulf of Maine. As described in the Approaches to Maine, New Hampshire, and Massachusetts PARS, these additional fairways would include the Massachusetts Bay Fairway, the Gulf of Maine Fairway, the Coastal Zone Fairway, and two Portland approach fairways. See 88 FR 20547 for more information.

Alternative 4—Proposed Rule Plus South Florida Fairways

Alternative 4 establish shipping safety fairways included in the Proposed Rule with the addition of fairways in southern Florida. The additional fairways would be extended to include an area from approximately Port St. Lucie south to the approaches to the Port of Miami. Extensive port access studies are underway for this area but are in the preliminary stages of development.

Alternative 5—Proposed Rule Plus Maine and South Florida Fairways

Alternative 5 establish shipping safety fairways included in the Proposed Rule with the addition of fairways both in the Gulf of Maine and South Florida. As a result, this alternative would include fairways from the Gulf of Maine to the southern extent of Florida on the Atlantic Coast.

Alternative 6—Proposed Rule Plus East to West Extension to Exclusive Economic Zone (EEZ) for Specific Fairways

Alternative 6 would establish shipping safety fairways included in the

Proposed Rule with the addition of several extensions that would expand certain east-west port-approach fairways out to the limit of the exclusive economic zone (EEZ). These extensions would cover approaches to and departures from the Port of New York/ New Jersey, the Delaware Bay, the Chesapeake Bay, the Port of Morehead City in North Carolina, and the Port of Wilmington in North Carolina.

Alternative 7—Proposed Rule Plus Gulf of Maine, South Florida, and East to West Extension to EEZ for Specific Fairways

Alternative 7 would establish shipping safety fairways included in the Proposed Rule with the addition of fairways in the Gulf of Maine, fairways in South Florida, and several extensions that would expand certain east-west port-approach fairways out to the limit of the EEZ. These additions would include all the extensions considered by Alternative 6 with the addition of two extensions that would cover approaches to and departures from Portland, ME, and the Gulf of Maine.

Summary of Expected Impacts

NEPA requires the identification and evaluation of impacts to the human environment likely to be caused by an agency's proposed action. The PEIS proposed in this NOI will be a planning-level document and the Coast Guard will work toward environmental compliance during the design and designation of the fairways. The PEIS will analyze potential impacts to the human environment caused by each of the alternatives.

The broad geographic area of the Proposed Action may impact physical, biological, and socioeconomic resources. Impacts to resources associated with proposed fairways are generally due to disturbance, vessel strikes, noise, ballast and biofouling, and gas emissions. Biological and physical resources impacted by the proposed fairways may include water quality, air quality, habitat (e.g., benthic and water column habitats), managed and non-managed fishery resources (e.g., fish, elasmobranchs, such as sharks, and invertebrates), and protected resources including migratory birds, corals, fish (including elasmobranchs such as sharks), sea turtles and marine mammals. Impacts to these biological and physical resources that may be considered include protected species interactions (e.g., entanglement, vessel strikes); alteration to habitats; disease transmission risk; escapement risk (e.g., invasive species); water quality changes (e.g., nutrients, contaminants); habitat

displacement and fragmentation (e.g., avoidance of high-density vessel traffic areas, increased marine debris); impacts to Essential Fish Habitat (EFH) such as fish migratory routes, open waters, hard bottom necessary for spawning, estuarine habitats, and coral reefs); ecosystem impacts (e.g., alteration of predator prey interactions); and acoustic, lighting and visual disturbances.

Under the Proposed Action, vessel noise, vessel operations, and vessel movement are not expected to result in significant impacts to the following resources: air quality, ambient sound, marine vegetation, marine invertebrates, flying insects, birds, bats, marine fish, EFH, commercial fishing, marine construction, mineral extraction, oil and gas extraction, recreation and tourism, existing renewable energy projects, research, transportation and shipping, and subsistence fishing and hunting. Pursuant to the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*), listed species and critical habitats expected to occur in the Project Area include: fish (Atlantic salmon, Atlantic sturgeon, shortnose sturgeon, Nassau grouper, oceanic whitetip shark, scalloped hammerhead shark, giant manta ray), whales (North Atlantic right whale, blue whale, fin whale, sperm whale, Rice's whale, sei whale), sea turtles (green, Kemp's ridley, leatherback, loggerhead, hawksbill, and olive ridley), and corals (boulder star, elkhorn, lobed star, mountainous star, pillar, rough cactus).

Pursuant to the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712 *et seq.*), the Proposed Action is not expected to result in a significant adverse effect on migratory bird populations. Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801–1882), the Proposed Action is not expected to adversely affect the quality or quantity of EFH in the Project Area.

Socioeconomic impacts considered in the PEIS may include impacts to commercial and recreational fishing; tourism and recreation; public health and safety; transportation; communications infrastructure; domestic and international seafood markets; oil, gas and alternative energy development and infrastructure; military preparedness; local ports, marinas and communities; and local job markets. Cultural and historic resources impacted could include archaeological sites, traditional fishing grounds and American Indian traditional uses. Environmental justice impacts considered include potential impacts of the action on vulnerable communities.

Wherever possible and supported by the best available science, the PEIS will recommend mitigation strategies to address potential impacts associated with Atlantic fairways establishment along the U.S. coast.

Anticipated Permits and Authorizations

The Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 *et seq.*) was enacted to protect the coastal environment from demands associated with residential, recreational, and commercial uses. The Coast Guard will determine the impact of the Proposed Action and provide a Coastal Consistency Determination or Negative Determination to the appropriate state agencies.

The MSA requires Federal agencies to consult with the Secretary of Commerce, through the National Marine Fisheries Service (NMFS), with respect to “any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act,” 16 U.S.C. 1855(b)(2). The Coast Guard will determine the impact of the Proposed Rule and consult with the NMFS if necessary.

The ESA provides for the conservation of endangered and threatened species and the ecosystems on which they depend. The Coast Guard anticipates consulting under Section 7 of the ESA with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, which have jurisdiction over the species (50 CFR part 402.14(a)).

The MMPA (16 U.S.C. 1361 *et seq.*) established, with limited exceptions, a moratorium on the “taking” of marine mammals under U.S. jurisdiction, and on the High Seas by vessels or persons under U.S. jurisdiction. The MMPA further regulates “takes” of marine mammals on the High Seas. The term “take,” as defined in Section 3 (16 U.S.C. 1362) of the MMPA, means “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal”. “Harassment” was further defined in the 1994 amendments to the MMPA as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (*i.e.*, Level A Harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (*i.e.*, Level B Harassment). The Coast Guard anticipates requesting a Letter of

Authorization to “take” marine mammals, defined as Level B harassment.

The Clean Water Act (33 U.S.C. 1251, *et seq.*), Section 404 regulates the discharge of dredged or fill material into waters of the United States and the Rivers and Harbors Act (33 U.S.C. 403), Section 10 regulates the obstruction or alteration of navigable waters of the United States. The Coast Guard anticipates that a very limited amount of work conducted as part of the Proposed Action may require a permit from the Corps of Engineers under either the Clean Water Act or Rivers and Harbors Act.

The National Historic Preservation Act (NHPA; 16 U.S.C. 470, *et seq.*), Section 106, requires that each federal agency identify and assess the effects its actions may have on historic resources, including potential effects on historic structures, archaeological resources, and tribal resources. The Coast Guard will determine if any historic resources are present in the project area, evaluate the potential for the proposed action to adversely affect these resources, and consult with the relevant State Historic Preservation Officer and any interested or affected Tribes to resolve any adverse effects by developing and evaluating alternatives or measures that could avoid, minimize, or mitigate impacts.

The Clean Air Act (42 U.S.C. 7401, *et seq.*) regulates emissions from both stationary (industrial) sources and mobile sources. The Coast Guard would evaluate the potential for increased emissions during implementation of the fairways in order to determine if the emissions would be in conformity with the State Implementation Plan (SIP) for attainment of National Ambient Air Quality Standards. Since January 2020, all ships must burn fuel with a content of 0.5 percent sulfur to comply with an International Maritime Organization amendment to the International Convention for the Prevention of Pollution from Ships (MARPOL).

In addition, Coast Guard will complete Consultation with all affected Federally Recognized Tribes on a government-to-government basis in accordance with Executive Order 13175.

Schedule for the Decision-Making Process

Following the scoping period announced in this Notice of Intent, and after consideration of all comments received during scoping, Coast Guard will prepare a Draft PEIS for the Proposed Action to establish shipping safety fairways (“fairways”) along the Atlantic Coast of the United States. Once the Draft PEIS is completed, it will

be made available for a 45-day public review and comment period. Coast Guard will announce the availability of the Draft PEIS in the **Federal Register** and local media outlets. Coast Guard expects the Draft PEIS will be available for public review and comment in 2024. In meeting CEQ regulations requiring EISs to be completed within 2 years, the Coast Guard anticipates the Final PEIS would be available in 2026. The Final PEIS would be published in the **Federal Register**. Should new information become available after the completion of the Draft or Final PEIS, supplemental NEPA documentation may be prepared in support of new information or changes in the Proposed Action considered under the PEIS.

Public Scoping Process

This NOI initiates the scoping process, which guides the development of the PEIS. The Coast Guard is seeking comments on the potential environmental impacts that may result from the Proposed Action or preliminary Alternatives. The Coast Guard is also seeking input on relevant information, studies, or analyses of any kind concerning impacts potentially affecting the quality of the human environment as a result of the Proposed Action. NEPA requires federal agencies to consider environmental impacts that may result from a Proposed Action, to inform the public of potential impacts and alternatives, and to facilitate public involvement in the assessment process. The PEIS would include, among other topics, discussions of the purpose and need for the Proposed Action, a description of alternatives, a description of the affected environment, and an evaluation of the environmental impact of the Proposed Action and alternatives.

The Coast Guard intends to follow the CEQ regulations (40 CFR 1500 *et seq.*) by scoping through public comments. Scoping, which is integral to the process for implementing NEPA, provides a process to ensure that (1) issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the Draft PEIS is thorough and balanced; and (4) delays caused by an inadequate PEIS are avoided.

Public scoping is a process for determining the scope of issues to be addressed in this PEIS and for identifying the issues related to the Proposed Action that may have a significant effect on the environment. The scoping process begins with publication of this notice. The Coast Guard seeks to do the following during the scoping process:

- Invite the participation of Federal, State, and local agencies, any affected Indian tribe, and other interested persons;

- Consult with affected Federally Recognized Tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Native American concerns, including potential impacts on Treaty rights, Indian trust assets, and cultural resources, will be given appropriate consideration;

- Determine the scope and the issues to be analyzed in depth in the PEIS;

- Indicate any related environmental assessments or environmental impact statements that are not part of the PEIS;

- Identify other relevant environmental review and consultation requirements, such as Coastal Zone Management Act consistency evaluations, and threatened and endangered species and habitat impacts; and

- Indicate the relationship between timing of the environmental review and other aspects of the application process.

With this NOI, Federal, State, Tribal, and local agencies with jurisdiction or special expertise with respect to environmental issues in the project area are asked to formally cooperate with the Coast Guard in the preparation of the PEIS.

Once the scoping process is complete, Coast Guard will prepare a Draft PEIS and will publish a **Federal Register** notice announcing its public availability. The public will be provided with an opportunity to review and comment on the Draft PEIS. After Coast Guard considers those comments, the Final PEIS will be prepared and its availability similarly announced to solicit public review and comment. Comments received during the Draft PEIS review period will be available in the public docket and made available in the Final PEIS.

Pursuant to the CEQ regulations, Coast Guard invites public participation in the NEPA process. This notice requests public participation in the scoping process, establishes a public comment period, and provides information on how to participate.

The 45-day public scoping period begins January 23, 2024 and ends March 8, 2024. Comments and related material submitted to the online docket via <https://www.regulations.gov/> must be received by the Coast Guard on or before March 8, 2024 must be postmarked on or before that same date. Comments may also be provided at one of the public meetings referenced in the "Public Participation and Request for

Comments" portion of the **SUPPLEMENTARY INFORMATION** section.

We encourage you to submit specific, timely, substantive, and relevant comments through the Federal Decision Making Portal at <https://www.regulations.gov>, on the site provided when searching the above docket number.

In submissions, please include the docket number for this Notice of Intent and provide reasoning for comments. To be considered timely, comments must be received on or before February 27, 2024 to be considered in the Draft PEIS. We will consider all substantive and relevant comments received during the comment period.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We review all comments received, but we will only post comments that address the topic of the notice. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Documents mentioned in this Notice of Intent as being available in the docket, and posted public comments, will be in the online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions.

This notice is issued under authority found in 42 U.S.C. 4332.

Dated: January 17, 2024.

M.D. Emerson,

Director, Marine Transportation System.

[FR Doc. 2024-01215 Filed 1-19-24; 4:15 pm]

BILLING CODE 9110-04-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7092-N-09]

Privacy Act of 1974; System of Records

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), Office of Policy Development & Research (PD&R) is issuing a public notice of its intent to establish a Privacy Act system of records titled "Moving to Work (MTW)

Asset Building Cohort Evaluation Data Files." The purpose of the system is to serve as a repository that stores and maintains statistically analyzed data collected to evaluate asset building programs implemented by the Public Housing Agencies (PHAs) participating in the Moving to Work (MTW) Asset Building Cohort.

DATES: Comments will be accepted on or before February 22, 2024. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

Federal e-Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

Fax: 202-619-8365

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410-0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: The Privacy Office; LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410; telephone number (202) 708-3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act of 2016 authorized HUD to award Moving to Work (MTW) authority to 100 additional Public Housing Authorities (PHAs) by September 2023, and required that new MTW agencies be selected in cohorts with a specific policy focus. The participating PHAs will implement either a rent reporting for credit building program, an opt-out savings account program, or a PHA-

designed asset building program. The Asset Building Cohort will test two types of asset building programs for HUD households, rent reporting for credit building and an opt-out savings account program. To enable rigorous evaluation, households will be randomly assigned to participate in the asset building program or be in the control group. Households assigned to the opt-out savings account program will be automatically enrolled and then informed that they have access to savings that the PHA is depositing into an escrow account for them, which will be a minimum of \$10 a month for two years.

Moving to Work Asset Building Cohort Evaluation Data Files stores information needed to evaluate the impact of the asset building programs. The study sample for rent reporting will be drawn from households who volunteer to have their rental payments reported to credit agencies to build credit. To rigorously study the impact of rent reporting, volunteers will be randomly assigned to a treatment group for whom rental payments are reported or a control group for whom such reporting does not occur. The rent reporting study will include a longitudinal panel of families who will participate in qualitative, in-depth interviews to provide insight into how they understand and experience rent reporting for credit building. The evaluation of the MTW Asset Building Cohort will help HUD determine if asset building programs of the types studied can be effectively implemented by PHAs and if they positively impact the well-being of HUD-assisted households.

HUD researchers (including Abt Associates and MEF Associates) will use this information to examine household outcomes related to housing stability and financial wellbeing. Researchers will also seek to understand the experience of households participating in the asset building programs and the PHAs that implement the asset building programs. This System of Records will contain data necessary to evaluate the effect of these new asset building programs.

SYSTEM NAME AND NUMBER:

Moving to Work Asset Building Cohort Evaluation Data Files, HUD/PDR-11.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at the following locations: Amazon Web Services, East, N. Virginia, and . 20945

Loudoun County Pkwy, Ashburn, VA 20147; and the U.S. Department of Housing and Urban Development Headquarters, 451 7th Street SW, Washington, DC 20410.

SYSTEM MANAGER(S):

Carol Star, Director, Program Evaluation Division, Office of Policy Development and Research, HUD, 451 Seventh Street SW, Washington, DC 20410, telephone number (202) 402-6139.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 501 and 502 of the Housing and Urban Development Act of 1970 (Pub. L. 91-609) (12 U.S.C. 1701z-1; 1701z-2(d) and (g)).

PURPOSE(S) OF THE SYSTEM:

The Moving to Work Asset Building Cohort Evaluation data files will store the information that is needed to evaluate the impact of the asset building programs on HUD-assisted households. The information to be maintained in this records system is necessary to identify participating families and determine the effectiveness of the interventions. The data in this system will be analyzed using statistical methods and any results shared with the public or published in any way will be reported only in the aggregate. Resulting reports will not disclose or identify any individuals or sensitive personal information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families enrolled in the Moving to Work asset building programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Tenant data: Includes enrollment information, administrative data (including credit scores), and survey responses from tenants, including: head of household's full name, date of birth, social security number, unique study ID, home address, household composition, demographics of household members, measures of financial wellbeing, educational attainment, employment and income information, housing and housing subsidy information, receipt of non-housing public benefits, and contact information.

RECORD SOURCE CATEGORIES:

Moving to Work asset building program participants, HUD PIH Inventory Management System/PIH Information Center, Public Housing Agency information systems, Credit Bureau data.

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, HUD may disclose information in this system of records:

(1) Research and Statistical Analysis Disclosure Routine Use:

To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, or cooperative agreement, or other agreement for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. Research reports and other analysis conducted under this routine use may not disclose identifiable information; all results must be reported in the aggregate and must ensure that no individual is identifiable.

(2) Data Breach Remediation Purposes Routine Use:

(a) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed there a breach in the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(b) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Contractor Routine Use:

To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and Paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, Social Security Number, the unique study ID, home address, telephone number, and personal email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Destroy upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

For Electronic Records: All personal data will be maintained on a secure workstation or server that is protected by a firewall and complex passwords in a directory that can only be accessed by the network administrators and the analysts actively working on the data; access rights to the data are granted to limited researchers on a need-to-know basis, and the level of access provided to each researcher is based on the minimal level required for that individual to fulfill their research role; all systems used to process or store data have Federal security controls applied to them; the data will be backed up on a regular basis to safeguard against system failures or disasters; and, unencrypted data will never be stored on a laptop or on a movable media such as CDs, diskettes, or USB flash drives.

For Paper Records: The site interviewers will securely store any hard copy forms with personal identifiers until they are shipped to the evaluation contractor via commercial mail services; all hard copy forms with personal identifying data (the participant agreement/informed consent form) will be stored securely in a locked cabinet that can only be accessed by authorized individuals working on the data. The locked cabinet will be stored in a locked office in a limited-access building. Additionally, permissions will be defined for each authorized user based on the user's role on the project.

Study data will be aggregated or de-identified at the highest level possible for each required, authorized use.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410-0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410-0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

N/A.

LaDonne L. White,
Chief Privacy Officer, Office of Administration.

[FR Doc. 2024-01219 Filed 1-22-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7092-N-10]

Privacy Act of 1974; System of Records

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), Office of Policy Development & Research (PD&R) is modifying a system of records, the

Community Choice Demonstration (formerly the Housing Choice Voucher (HCV) Mobility Demonstration) Evaluation Data Files (CCD-EDF). The purpose of the Community Choice Demonstration Evaluation Data Files system is to serve as a repository to store, maintain, and statistically analyze all data collected through the evaluation of the Community Choice Demonstration. The modification makes updates to the system of records name, categories of records in the system, system location, record source categories, routine uses, policies and practices for storage and retrieval of records, policies and practices for retention and disposal of records, and safeguards. The updates are explained in the "Supplementary Section" of this notice.

DATES: This modification comments will be accepted on or before February 22, 2024. This SORN becomes effective immediately, while the routine uses become effective after the comment period immediately upon publication except for the routine uses, which will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by the docket number or by one of the following methods:

Federal e-Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

Fax: 202-619-8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410-0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov> including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: LaDonne White; 451 Seventh Street SW, Room 10139, Washington, DC 20410, telephone number (202) 708-3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call,

please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: HUD's Office of Policy Development & Research (PD&R) maintains the Community Choice Demonstration (formerly the Housing Choice Voucher (HCV) Mobility Demonstration) Evaluation Data Files system of records to store the information needed to evaluate the impact of the Community Choice Demonstration on a broad range of participant outcomes. A new information collection will be added to the existing Community Choice Demonstration Evaluation Data Files. The Department will expand the data collected for the current study evaluating the impact of the Community Choice Demonstration to include information on housing quality, such as exposure to indoor pollutants and allergens, and on adult and child health, among families who are part of the Community Choice Demonstration. HUD is publishing this revised notice to reflect updates to data collection and storage. Specific changes to the SORN include:

- a. *System Name and Number:* Updated to the Community Choice Demonstration Evaluation Data Files (CCD-EDF).
- b. *Categories of Records in the System:* Expanded data collection of participants in the Community Choice Demonstration to clarify HUD will include additional categories of records, such as housing quality and health information, which will be stored as part of CCD-EDF.
- c. *System Location:* Updated to include the data storage locations of the U.S. Census Bureau and of study partner, Johns Hopkins University.
- d. *Policies and Practices for Retrieval of Records:* Updated to include date of birth, social security number, and email address.
- e. *Administrative, Technical, and Physical Safeguards:* Updated to include the procedures and infrastructure of new study partner, Johns Hopkins University.
- f. *Record Source Categories:* Updated to include HUD's Tenant Rental Assistance Certification System (TRACS).
- g. *Routine Uses:* Updated the General Contracting Routing Use section to include parties working with HUD on agreements other than a contract, service, grant, or cooperative agreements.
- h. *Policies and Practices for Retention and Disposal of Records:* Updated to describe the length of record retention.

SYSTEM NAME AND NUMBER:

Community Choice Demonstration Evaluation Data Files, HUD/PDR-09.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Abt Associates Inc., 10 Fawcett Street, Cambridge, MA and at 6130 Executive Blvd., Rockville, MD 20852; AT&T Datacenter, 15 Enterprise Ave, Secaucus, NJ 07094; Johns Hopkins University, 5801 Smith Avenue, Baltimore, MD 21209; the U.S. Census Bureau, 17101 Melford Blvd., Bowie, MD 20715; and HUD Headquarters, 451 7th Street SW, Washington, DC 20410-0001.

SYSTEM MANAGER(S):

Carol Star, Director, Program Demonstration Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-0001, Telephone Number (202) 402-6139.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 502 of the Housing and Urban Development Act of 1970 (Public Law 91-609) (12 U.S.C. 1701z-1; 1701z-2(d) and (g)).

PURPOSE(S) OF THE SYSTEM:

The purpose of the Community Choice Demonstration Evaluation Data Files is to store the information that is needed to evaluate the impact of the Community Choice Demonstration. The information to be maintained in this records system is necessary to identify and track the participating families over the course of the study and determine the effectiveness of the interventions. The data in this system will be analyzed using statistical methods and any results shared with the public or published in any way will be reported only in the aggregate. Resulting reports will not disclose or identify any individuals or sensitive personal information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families enrolled in the Community Choice Demonstration, staff at public housing agencies (PHAs) that are administering the Community Choice Demonstration, providers of mobility services that are partnering with PHAs to administer the program, and landlords.

CATEGORIES OF RECORDS IN THE SYSTEM:

Head of household's full name, social security number, date of birth, alien registration number, unique study ID, home address, household composition,

basic demographics of household members (educational attainment, relationship to head of household, employment information of adults, chronic health conditions of children etc.), housing and neighborhood status, perceptions of opportunity areas, financial well-being, individual and household earnings, responses to family qualitative interviews, and contact information.

Responses to PHA staff qualitative interviews: Respondent's full name, title or position, email address, and phone number.

Responses to mobility service providers qualitative interviews: Respondent's full name, title or position, email address, and phone number.

Responses to landlord qualitative interviews: Respondent's full name, title or position, email address, phone number, property locations, and audio recording.

Data from the Mobility Services Delivery Management Information Systems: Service recipients full name, services provided, duration and intensity of services.

Administrative data: Demographic data on tenants, including social security number, date of birth, race, sex, disability status, household members, home address, contact information, and Housing Choice Voucher program participation information for households (types and dates of program actions).

Home assessment: Demographic data on tenants, including full name, social security number, date of birth, household members, home address, contact information, and unique study ID; home measurements (e.g., indoor air quality); interviewer observations of unit and building characteristics; and responses to survey about unit air quality, pests, temperature, allergens, and child health conditions.

Child assessment: Demographic data on tenants, including full name, social security number, date of birth, household members, home address, contact information, and unique study ID; parent and child responses to survey about home environment, parenting practices, child, behavioral, education, and social functioning, child health conditions, and child's prior contact with police; child executive functioning assessment; and health care records.

Obesity and type II diabetes risk assessment: Demographic data on tenants, including full name, social security number, date of birth, household members, home address, contact information, and unique study ID; adult responses to survey about

physical and mental health, chronic health conditions, and neighborhood characteristics; adult and child height, weight, and waist circumference measurements; results from adult Hemoglobin A1C test; results from adult and child accelerometers; adult blood pressure readings; and health care records.

Locational data: Data such as the address and location of participating household. These data sets will be drawn from a variety of sources, including the National Change of Address database, proprietary databases such as Accurant, and directly from participating households.

RECORD SOURCE CATEGORIES:

Program participants, housing assessment measurement data, program participants' health measurement data, landlords, PHA staff, mobility service providers, Mobility Services Delivery Management Information Systems, HUD PIH Inventory Management System/PIH Information Center, and HUD Tenant Rental Assistance Certification System (TRACS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(2) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, or cooperative agreement, or other agreement for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(3) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered

relevant to accomplishing an agency function.

(4) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed there has breached the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(5) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(6) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(7) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his

or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(8) To appropriate Federal, State, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(9) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or employees or contractors, and other entities and their agents for the conduct of HUD-approved ancillary studies relevant to the evaluation of the Community Choice Demonstration. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. Research reports resulting from any such ancillary studies would be required to report all results in the aggregate and to ensure that no individual was identifiable.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, social security number, date of birth, home address, telephone number, and personal email address, and Unique Study ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Destroy upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

For Electronic Records: All personal data will be maintained on a secure workstation or server that is protected by a firewall and complex passwords in a directory that can only be accessed by the network administrators and the analysts actively working on the data; access rights to the data are granted to

limited researchers on a need-to-know basis, and the level of access provided to each researcher is based on the minimal level required that individual to fulfill his research role; the data will be backed up on a regular basis to safeguard against system failures or disasters; and, unencrypted data will never be stored on a laptop or on a movable media such as CDs, diskettes, or USB flash drives.

For Paper Records: The site interviewers will securely store any hard copy forms with personal identifiers until they are shipped to the evaluation contractor via commercial mail services; all hard copy forms with personal identifying data (the participant agreement/informed consent form) will be stored securely in a locked cabinet that can only be accessed by authorized individuals working on the data. The locked cabinet will be stored in a locked office in a limited-access building. Additionally, permissions will be defined for each authorized user based on the user's role on the project. For example, the local site interviewer will be able to review data for study participants only for his or her own specific site. Study data will be aggregated or de-identified at the highest level possible for each required, authorized use.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street, SW Washington, DC 20410. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for accessing, contesting, and appealing agency determinations by the individual concerned are published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410-0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a

notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Document Citation: 87 FR 32179, Docket No. FR-7062-N-05, May 27, 2022.

LaDonne L. White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2024-01217 Filed 1-22-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7092-N-11]

Privacy Act of 1974; System of Records

AGENCY: Office of Single-Family Asset Management, HUD.

ACTION: Notice of a rescindment of a systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), the Office of Single-Family Asset Management, is issuing a public notice of its intent to rescind the Validation and Disposition Service (VDS-Best Ex) because the project was terminated and never went into Production.

DATES: Comments will be accepted on or before February 22, 2024. This proposed action will be effective immediately upon publication.

ADDRESSES: You may submit comments, identified by one of the following methods:

Federal e-Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

Fax: 202-619-8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410-0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov> including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

LaDonne White, Chief Privacy Officer, 451 Seventh Street SW, Room 10139; Washington, DC 20410; telephone number (202) 708-3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: The Validation and Disposition Service (VDS-Best Ex) is being terminated because the project never went into production. The VDS-Best Ex was developed to allow HUD to mitigate financial risk to the Federal Housing Administration (FHA) Mutual Mortgage Insurance Fund (MMIF) by providing property valuation and disposition strategies. The records are no longer maintained by HUD and have run the record retention period. All test and other data containing PII used in development has been deleted.

SYSTEM NAME AND NUMBER:

Validation and Disposition Service (VDS-Best Ex).

HISTORY:

Agency Docket Number: FR-6146-N-02, 84 FR 14386 (April 10, 2019)

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2024-01222 Filed 1-22-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2023-N004; FXES11130300000-234-FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these

applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before February 22, 2024.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (e.g., ESXXXXXX; see table in

SUPPLEMENTARY INFORMATION:

- *Email (preferred method):* permitsR3ES@fws.gov. Please refer to the respective application number (e.g., Application No. ESXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT:

Nathan Rathbun, 612–713–5343 (phone); permitsR3ES@fws.gov (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY,

TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public

comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ESPER5565041	Julia Leone, Saint Paul, MN.	Rusty patched bumble bee (<i>Bombus affinis</i>).	MN	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, and release.	New.
ES64079B	Minnesota Zoo, Apple Valley, MN.	Dakota skipper (<i>Hesperia dacotae</i>), poweshiek skipperling (<i>Oarisma poweshiek</i>), rusty patched bumble bee (<i>Bombus affinis</i>).	MI, MN, ND, SD, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, identify, mark, monitor and survey, captive rearing, propagation, and release.	Renew and amend.
TE06845A	Lochmueller Group, Evansville, IN.	Add new species—tri-colored bat (<i>Perimyotis subflavus</i>)—to existing authorized species: Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>M. septentrionalis</i>), and gray bat (<i>M. grisescens</i>).	GA, IL, IN, KY, OH; add: AL, AR, CO, DC, FL, IA, KS, LA, MA, MD, ME, MI, MN, MS, MO, MT, NE, NC, NH, NJ, NY, ND, OK, PA, RI, SD, TN, TX, UT, VI, VT, WI, WY, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Renew and amend.
ESPER5664139	Kevyn Ju-neau, River Falls, WI.	Rusty patched bumble bee (<i>Bombus affinis</i>).	WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, hold, and release.	New.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES08501D	Alyssa Roberts, Grand Rapids, MN.	Rusty patched bumble bee (<i>Bombus affinis</i>).	IA, IL, IN, MI, MN, MO, OH, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, hold, and release.	Renew.
ES81122C	Three Rivers Park District, Plymouth, MN.	Rusty patched bumble bee (<i>Bombus affinis</i>).	MN	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, and release.	Renew.
ES74742C	Benjamin Smith, Kearney, MO.	Add new species—Tricolored bat (<i>Perimyotis subflavus</i>) and Ozark big-eared bat (<i>Corynorhinus townsendii ingens</i>)—to existing authorized species: Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>M. septentrionalis</i>), and gray bat (<i>M. grisescens</i>).	AL, AR, CT, DC, DE, FL, GA, KS, KY, IA, IL, IN, LA, MA, MD, ME, MI, MN, MO, MS, NC, NE, ND, NH, NJ, NY, OK, OH, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets and harp traps, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Renew and amend.
ES74592A	Robert Brown, Liberty Township, OH.	Add new species—Tricolored bat (<i>Perimyotis subflavus</i>)—to existing authorized species: Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>M. septentrionalis</i>), gray bat (<i>M. grisescens</i>), Ozark big-eared bat (<i>Corynorhinus townsendii ingens</i>), Virginia big-eared bat (<i>C. t. virginianus</i>).	AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets and harp traps, identify, handle, collect non-intrusive measurements, band, enter hibernacula, radio-tag, and release.	Renew and amend.
ES06452D	National Park Service Apostle Islands National Lakeshore, Bayfield, WI.	Piping plover (<i>Charadrius melodus</i>).	WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, salvage, release, and erect exclosures.	Renew.
ES38842A	Sanders Environmental, Inc., Bellefonte, PA.	Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>M. septentrionalis</i>), gray bat (<i>M. grisescens</i>), Ozark big-eared bat (<i>Corynorhinus townsendii ingens</i>), Virginia big-eared bat (<i>C. t. virginianus</i>).	Add new states—TX—to existing authorized states: AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, MS, MT, NC, ND, OK, OH, SC, SD, TN, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio-tag, band, and release.	Amend.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES03494B	GAI Consultants, Florence, KY.	Add new species—Tri-colored bat (<i>Perimyotis subflavus</i>)—to existing authorized species: Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>M. septentrionalis</i>), gray bat (<i>M. grisescens</i>), Ozark big-eared bat (<i>Corynorhinus townsendii ingens</i>), Virginia big-eared bat (<i>C. t. virginianus</i>).	AL, AR, CO, CT, DC, DE, FL, GA, KS, KY, IA, IL, IN, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, NE, ND, NH, NJ, NM, NY, OK, OH, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets and harp traps, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Renew and amend.
ES24566D	Nicholas Smeenk, Columbus, OH.	Eastern massasauga rattlesnake (<i>Sistrurus catenatus</i>) and copperbelly water snake (<i>Nerodia erythrogaster neglecta</i>).	IA, IL, IN, MI, NY, OH, PA, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, temporary hold for processing, handle, collect tissue samples, mark with PIT tags and/or ventral scale clips, and release.	Renew.
ES37065D	U.S. Army Corps of Engineers, Carlyle Lake Project Office, Carlyle, IL.	Eastern massasauga rattlesnake (<i>Sistrurus catenatus</i>).	IL	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, temporary hold for processing, handle, and release.	Renew.
ES14549C	Larissa Herrera, Belmont, MI.	Add new species—round hickorynut (<i>Obovaria subrotunda</i>), to existing authorized species: 11 freshwater mussel species.	IA, IL, IN, MI, MN, OH, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate due to stranding..	Amend.
TE90426C	Natalie Dingleline, Haslett, MI.	Hungerford's crawling water beetle (<i>Brychius hungerfordi</i>).	MI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, conduct health and disease monitoring, and evaluate impacts.	Capture, handle, temporarily hold, handle, release, relocate, and salvage.	Renew.
TE60958A	Bat Calls Identification, Inc. Kansas City, MO.	Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>M. septentrionalis</i>), gray bat (<i>M. grisescens</i>), Ozark big-eared bat (<i>Corynorhinus townsendii ingens</i>), Virginia big-eared bat (<i>C. t. virginianus</i>).	AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Renew.
ES30472	Elaine Evans, St. Paul, MN.	Rusty patched bumble bee (<i>Bombus affinis</i>).	MN, WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, identify, mark, bio sample and release.	Renew and Amend.
TE64073B	Ecological and GIS Services, Indianola, IA.	Dakota skipper (<i>Hesperia dacotae</i>), Poweshiek skipperling (<i>Oarisma poweshiek</i>).	IA, MN, SD ...	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release ...	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ESPER1462021	Keystone Ecological Services, LLC, Wellsboro, PA.	Add new species—Gray bat (<i>Myotis grisescens</i>), tricolored bat (<i>Perimyotis subflavus</i>)—to existing authorized species: Indiana bat (<i>M. sodalis</i>), northern long-eared bat (<i>M. septentrionalis</i>), Virginia big-eared bat (<i>Corynorhinus townsendii virginianus</i>).	Add new states—AL, AR, CO, GA, IL, IN, KS, MO, MS, NM, OK—to existing authorized states: CT, DC, DE, IA, KY, LA, MA, MD, ME, MI, MN, MT, NC, ND, NE, NH, NJ, NY, OH, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Add new activity—capture with harp traps—to existing authorized activities: capture with mist nets, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Amend.
ESPER0002430	David Ford, Spring, TX.	Add new species—Round hickorynut (<i>Obovaria subrotunda</i>) and longsolid (<i>Fusconaia subrotunda</i>), to existing authorized species: 21 freshwater mussel species.	AL, AR, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, MS, NE, NM, NY, NC, OK, OH, PA, SD, TN, TX, VA, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Service, Midwest Region.

[FR Doc. 2024–01258 Filed 1–22–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval by Operation of Law of Amendment to Class III Tribal-State Gaming Compacts (Sherwood Valley Band of Pomo Indians, Resighini Rancheria, Manchester Band of Pomo Indians, Cahto Tribe of the Laytonville Rancheria, and the State of California)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval by operation of law of amendments to the Tribal-State Gaming Compacts between the Sherwood Valley Rancheria of Pomo Indians, Resighini Rancheria, Manchester Band of Pomo Indians of the Manchester Rancheria,

Cahto Tribe of the Laytonville Rancheria, respectively, and the State of California.

DATES: The Compacts takes effect on January 23, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.*, (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of Class III gaming activity on the Tribe's Indian lands. *See* 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary but only to the extent the compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C). The IGRA also requires the Secretary of the Interior to publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. *See* 25 U.S.C. 2710(d)(8)(D). The Department's regulations at 25 CFR 293.4 require all

compacts and amendments to be reviewed and approved by the Secretary prior to taking effect. The Secretary took no action on the Compact amendments between the Sherwood Valley Band of Pomo Indians, Resighini Rancheria, Manchester Band of Pomo Indians, Cahto Tribe of the Laytonville Rancheria, respectively, and the State of California, within the 45-day statutory review period. Therefore, the Compact amendments are considered to have been approved, but only to the extent they are consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–01231 Filed 1–22–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM AZ FRN MO#4500176195; AZA–38291, AZAZ105848086]

Notice of Public Meeting for U.S. Forest Service Hassayampa River Withdrawal Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, the U.S. Department of the Interior, Bureau of Land Management (BLM), Hassayampa Field Office, Arizona, will hold a public meeting for the U.S. Forest Service's (FS) withdrawal application for 3,739 acres of National Forest System (NFS) lands within the Prescott National Forest. The FS's request is for withdrawal of these lands from location and entry under the U.S. mining laws, and from leasing under the mineral and geothermal leasing laws, for a 20-year term, subject to valid existing rights. The purpose of the requested withdrawal is to protect the Hassayampa River riparian corridor, located in Yavapai County, Arizona, from potential adverse impacts from mining and mineral or geothermal development activities.

DATES: The BLM will hold one public meeting on February 28, 2024. The meeting will begin at 6 p.m. Mountain Time (MT) and adjourn at approximately 7 p.m. MT.

ADDRESSES: The meeting will be held at the Prescott Public Library, 215 East Goodwin Street, Prescott, AZ 86303.

FOR FURTHER INFORMATION CONTACT: Michael Ouellett, Realty Specialist, BLM Arizona State Office, telephone

(602) 417–9561, or email mouellett@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Michael Ouellett at least two weeks before the start of the meeting.

SUPPLEMENTARY INFORMATION: The FS's request is for a new withdrawal encompassing 1,677.25 acres of NFS lands previously withdrawn by Public Land Order No. 7414 (expired October 11, 2019), and an additional 2,061.75 acres of riparian corridor that the FS has identified as needing protection. A description of these lands was published in the **Federal Register** (88 FR 37088) on June 6, 2023, which is available at: <https://www.federalregister.gov/d/2023-11998>.

The meeting is open to the public, and a public comment period will be held. Depending on the number of persons wishing to comment and the time available, time allotted for individual oral comments may be limited. Use of the Prescott Public Library meeting rooms or other facilities by any person, candidate, group, or organization does not constitute or imply the endorsement, recommendation, or favoring of the City of Prescott, or any of its officials, employees, or contractors acting on its behalf.

Written comments may be submitted at the meeting. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2310.3–1(c)(1).

Irina A Ford,

Field Manager, BLM Arizona Hassayampa Field Office.

[FR Doc. 2024–01157 Filed 1–22–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–37273; PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before January 13, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by February 7, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to National_Register_Submissions@nps.gov with the subject line “Public Comment on <property or proposed district name, (County) State>.” If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, sherry_frear@nps.gov, 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 13, 2024. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

Key: State, County, Property Name, Multiple Name(if applicable), Address/Boundary, City, Vicinity, Reference Number.

GEORGIA**Rockdale County**

Fountain Hill, Address Restricted, Conyers vicinity, SG100009953

MASSACHUSETTS**Bristol County**

Bradford Durfee Textile School, 64 Durfee Street, Fall River, SG100009976

Suffolk County

Uphams Corner Historic District, Generally along Columbia Road from Annabel Street to the north to Bird Street to the south, Boston, SG100009975

MISSISSIPPI**Adams County**

Holy Family Catholic Church Historic District, (Civil Rights Resources of Natchez and Adams County, Mississippi MPS), Roughly, along Aldrich, Old D'Evereux, St. Catherine, Abbott and Byrne Sts., Natchez, MP95000855

NEVADA**Clark County**

Leroy and Carrie Christensen House, 500 W. Van Buren Street, Las Vegas, SG100009944

Elko County

El Rancho Hotel and Casino, 1629 Lake Avenue, Wells, SG100009943

Lincoln County

Gem Theater, 648 Main Street, Pioche, SG100009942

NEW YORK**Broome County**

State Street-Henry Street Historic District (Boundary Increase), 221 Washington Street to Lewis Street; 1 Lewis Street to Prospect Avenue; 212 State Street to CP Rail Systems track; East Clinton Street, Binghamton, BC100009963

Dutchess County

Main Mall Historic District (Boundary Increase), (Poughkeepsie MRA), 293–317 Main St. and 3–6 Garden St., Poughkeepsie, BC100009967

New York County

Our Lady of Victory National Shrine and Basilica Historic District, 777 Ridge Road and 781 Ridge Road, Lackawanna, SG100009962

Onondaga County

H.A. Moyer Factory Complex (Boundary Increase), (Industrial Resources in the City of Syracuse, Onondaga County, NY MPS), 1920 Park St, Syracuse, BC100009965
J.F. O'Connor Sales Company Garage, 1641 East Genesee Street, Syracuse, SG100009969

NORTH CAROLINA**Orange County**

Navy Reserve Officers Training Corps (NRQTC) Naval Armory at UNC-Chapel Hill, 221 South Columbia St., Chapel Hill, SG100009948

TENNESSEE**Sumner County**

Scattersville Public School, 227 Scattersville Road, Portland, SG100009970

TEXAS**Aransas County**

Rockport School, 619 North Live Oak Street, Rockport, SG100009945

Galveston County

Rosewood Cemetery, 2825 63rd Street, Galveston, SG100009946

Harris County

K'nesseth Israel Synagogue, 100 West Sterling Avenue, Baytown, SG100009949

VIRGINIA**Montgomery County**

Pilot School, 4449 Brush Creek Road/Route 617, Pilot, SG100009956

Roanoke INDEPENDENT CITY

Norfolk & Western Class J No. 611 Locomotive, 303 Norfolk Avenue SW, Roanoke, SG100009961

Salem INDEPENDENT CITY

Hart Motor Company, 1341 E. Main Street, Salem, SG100009960

A request for removal has been made for the following resource(s):

MASSACHUSETTS**Middlesex County**

Curtis, Allen Crocker, House-Pillar House, (Newton MRA), 26 Quinobequin Rd., Newton, OT86001787
Jaquith, Abraham, House, (First Period Buildings of Eastern Massachusetts TR), 161 Concord Rd., Billerica, OT90000166

Additional documentation has been received for the following resource(s):

ARKANSAS**Pulaski County**

Railroad Call Historic District (Additional Documentation), 108, 112, and 114 S. Pulaski St., Little Rock, AD97000749

NEW YORK**Dutchess County**

Main Mall Historic District (Additional Documentation), (Poughkeepsie MRA), 315 Main Mall to 11 Garden St., Poughkeepsie, AD82001148.

Onondaga County

H.A. Moyer Factory Complex (Additional Documentation), (Industrial Resources in the City of Syracuse, Onondaga County, NY MPS), 1710 North Salina and 301 Wolf Sts., Syracuse, AD100007668

TENNESSEE**Bradley County**

Hughes, W. J., Business House (Additional Documentation), 3202 Ocoee St., Cleveland, AD75001735

Davidson County

Litterer Laboratory (Additional Documentation), 631 2nd Ave., S., Nashville, AD78002581

Madison County

Jackson Free Library (Additional Documentation), College and Church Sts., Jackson, AD75001769

Marshall County

Cornersville Methodist Episcopal Church South (Additional Documentation), 100 S. Mulberry St., Cornersville, AD82003991

Wilson County

Memorial Hall, Cumberland University (Additional Documentation), Cumberland University campus, Lebanon, AD77001301

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2024–01261 Filed 1–22–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. DEA–1316]

Importer of Controlled Substances

Application: Mylan Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Mylan 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 February 22, 2024. Such persons may also file a written request for a hearing on the application on or before February 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 December 5, 2023, Mylan Inc., 3711 Collins Ferry Road, Morgantown, West Virginia 26505–2362, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Methylphenidate	1724	II
Oxycodone	9143	II
Hydromorphone	9150	II
Methadone	9250	II
Morphine	9300	II
Fentanyl	9801	II

The company plans to import the above controlled substances as bulk active pharmaceutical ingredients for internal testing purposes only and finished dosage forms for analytical testing and distribution for clinical trials to support foreign market participation. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant’s business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,
Acting Deputy Assistant Administrator.
[FR Doc. 2024–01136 Filed 1–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1317]

Importer of Controlled Substances Application: Mylan Pharmaceuticals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Mylan Pharmaceuticals, 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 February 22, 2024. Such persons may also file a written request for a hearing on the application on or before February 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 December 6, 2023 Mylan Pharmaceuticals, Inc., 2898 Manufacturers Road, Greensboro, North Carolina 27406–4600, applied to be registered as an importer of the

following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Remifentanyl	9739	II

The company plans to import the above listed controlled substances in finished dosage form for commercial distribution to its customers. 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.

Claude Redd,
Acting Deputy Assistant Administrator.
[FR Doc. 2024–01137 Filed 1–22–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 1315]

Bulk Manufacturer of Controlled Substances Application: Invizyne Technologies, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Invizyne Technologies, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **Supplemental 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 March 25, 2024. Such persons may also file a written request for a hearing on the application on or before March 25, 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 November 17, 2023, Invizyne Technologies, Inc., 750 Royal Oaks Drive, Suite 106, Monrovia, California 91016–6357, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substance for the internal use intermediates or for sale to its customers. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture this drug as synthetic. No other activities for this drug code is authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–01135 Filed 1–22–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1313]

Importer of Controlled Substances Application: Medi-Physics Inc. DBA GE Healthcare

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Medi-Physics Inc. DBA GE Healthcare 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 February 22, 2024. Such persons may also file a written request for a hearing on the application on or before February 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 December 14, 2023, Medi-Physics Inc. DBA GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412 applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cocaine	9041	II
Ecgonine	9180	II

The company plans to import derivatives of the listed controlled substances to be used for the manufacture of a diagnostic product and reference standards. 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.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–01133 Filed 1–22–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 1314]

Importer of Controlled Substances Application: Myonex Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Myonex Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 22, 2024. Such persons may also file a written request for a hearing on the application on or before February 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 December 20, 2023, Myonex Inc., 100 Progress Drive, Horsham, Pennsylvania 19044, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Morphine	9300	II
Oxymorphone	9652	II
Fentanyl	9801	II

The company plans to import the listed controlled substances in dosage form for clinical trials, research, and analytical purposes. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,
Acting Deputy Assistant Administrator.
[FR Doc. 2024–01134 Filed 1–22–24; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration
[Docket No. DEA–1312]

Bulk Manufacturer of Controlled Substances Application: Maridose, LLC

AGENCY: Drug Enforcement Administration, Justice.
ACTION: Notice of application.

SUMMARY: Maridose, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 25, 2024. Such persons may also file a written request for a hearing on the application on or before March 25, 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 December 5, 2023, Maridose, LLC, 74 Orion Street, Unit 7, Brunswick, Maine 04011, 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 company plans to bulk manufacture the listed controlled substances to supply the Drug Enforcement Administration-registered researchers for their approval studies. No other activities for these drug codes are authorized for this registration.

Claude Redd,
Acting Deputy Assistant Administrator.
[FR Doc. 2024–01132 Filed 1–22–24; 8:45 am]
BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Partial Consent Decree Under the Clean Water Act

On January 9, 2024, the Department of Justice lodged a proposed Partial Consent Decree with the United States District Court for the District of Arizona, in the lawsuit entitled *United States v. Navajo Tribal Utility Authority*, Civil Action No. 3:24–cv–08006.

The United States filed this lawsuit under the Clean Water Act. The United States' complaint seeks injunctive relief for violations of the limitations and conditions established in the defendant's National Pollutant Discharge Elimination System ("NPDES") permits at three of its wastewater treatment facilities within the Navajo Nation in Northeastern Arizona. The Partial Consent Decree requires the defendant to improve the performance of its existing treatment

plants in the short term, construct new treatment plants over the longer term, improve its operation and maintenance of the facilities, and study its collection systems to identify defects and plan for their repair.

The publication of this notice opens a period for public comment on the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Navajo Tribal Utility Authority*, D.J. Ref. No. 90–5–1–1–12527. All comments must be submitted no later than forty-five (45) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Partial Consent Decree may be downloaded and examined from this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$47.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is \$16.75.

Lori Jonas,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
[FR Doc. 2024–01161 Filed 1–22–24; 8:45 am]
BILLING CODE 4410–15–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2024 Competitive Grant Funds for the Technology Initiative Grant Program

AGENCY: Legal Services Corporation.
ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this Notice describing the conditions for submitting a pre-application for 2024 Technology Initiative Grants (TIGs), and for

applying under TIG categories that do not require pre-applications.

DATES:

General: The deadline to submit a Pre-Application is Monday, March 11, 2024, at 11:59 p.m. ET. The deadline to submit full applications is June 3, 2024, at 11:59 p.m. ET.

Technology Improvement Projects: The deadline to submit full applications is May 19, 2024, at 11:59 p.m. ET.

Adoption, Expansion, and Enhancement: The deadline to submit full applications is June 3, 2024, at 11:59 p.m. ET.

ADDRESSES: Pre-Applications and full applications must be submitted electronically via LSC's unified grants management system, GrantEase.

FOR FURTHER INFORMATION CONTACT:

Glenn Rawdon, Senior Program Counsel for Technology, Office of Program Performance, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295-1552 or grawdon@lsc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

Since 2000, Congress has provided an annual appropriation to LSC to award special funding for client self-help and information technology projects. LSC's TIG program funds technology tools that help achieve LSC's goal of increasing the quantity and quality of legal services available to eligible persons. Projects funded under the TIG program develop, test, and replicate innovative technologies that can enable grant recipients and state justice communities to improve low-income persons' access to high-quality legal assistance through an integrated and well-managed technology system. The TIG program also supports effective technology planning and management at LSC-funded organizations through the use of targeted assessment grants focused on improvements to technology systems and information security.

II. Funding Opportunity Information**A. Eligible Applicants**

To be eligible for Technology Initiative Grants, applicants must be current grantees of LSC Basic Field-General, Basic Field-Migrant, or Basic Field-Native American grants. In addition, applicants must receive basic field funding of at least a one-year term, be up to date on reporting on any existing TIG-funded projects, and not have had a previous TIG terminated in the past three years for reporting or other performance issues.

B. Technology Initiative Grant Purpose and Key Goals

Since LSC's TIG program was established in 2000, LSC has made over 859 grants totaling over \$81 million.

This grant program encourages organizations to use technology in innovative ways to:

1. Effectively and efficiently provide high-quality legal assistance to low-income persons and to promote access to the judicial system through legal information, advice, and representation.

2. Improve service delivery, quality of legal work, and management and administration of grantees.

3. Develop, test, and replicate innovative strategies that can enable grantees and state justice communities to improve clients' access to high-quality legal assistance.

C. Funding Categories**1. General Technology Initiative Grants**

Projects in this category (1) implement new or innovative approaches for using technology in legal services delivery; (2) enhance the effectiveness and efficiency of existing technologies so that they may be better used to increase the quality and quantity of services to clients; or (3) replicate, adapt, or provide added value to the work of prior technology projects. This includes, but is not limited to, the implementation and improvement of tested methodologies and technologies from previous TIG projects. We also encourage replication of proven technologies from non-LSC funded legal aid organizations as well as sectors outside the legal aid community. Applicants seeking continuation funding for their own existing TIG initiatives may wish to apply under the Adoption, Expansion and Enhancement Grants category discussed below.

LSC recommends a minimum amount for funding requests in this category of \$40,000, but projects with lower budgets will be considered. There is no maximum amount for TIG funding requests that are within the total appropriation for TIG. All applicants in this category must submit a pre-application according to the process and requirements outlined in this notice.

2. Technology Improvement Projects

LSC recognizes that grantees need sufficient technology infrastructure in place before they can take on a more innovative TIG project, and this grant category is for applicants that need to improve their basic technology infrastructure or their information security posture. The maximum funding amount for this category is \$35,000.

Technology Improvement Projects do not require a pre-application.

3. Adoption, Expansion, and Enhancement Grants

In 2023, LSC piloted a new category, called Adoption, Expansion, and Enhancement Grants, to provide continuation funding for those TIG projects that have moved beyond the proof-of-concept phase and demonstrated excellent results. This category is continuing in 2024. This funding allows successful TIG grantees to further build upon a specific project and its technologies, ensure that their TIG-funded work is effectively integrated into the service delivery system, and complete the project activities necessary to ensure the initiative's long-term success.

Adoption, Expansion, and Enhancement Grants are available to current TIG recipients and to recipients of recently completed TIG projects. Applicants seeking to enhance a non-TIG initiative or replicate another organization's project should apply under the General category. There is no pre-application for these proposals, but LSC encourages all prospective applicants to meet with their regional TIG program manager to discuss whether an Adoption, Expansion, and Enhancement grant may be a good fit. Applicants should be able to clearly demonstrate that their project was successful and that they have a reasonable plan for building on that success.

LSC recommends a minimum amount for funding requests in this category of \$40,000, but projects with lower budgets will be considered. There is no maximum amount for TIG funding requests that are within the total appropriation for TIG. Adoption, Expansion, and Enhancement Grants do not require a pre-application.

D. Available Funds for 2024 Grants

A total of \$5 million is available for 2024 TIG awards. LSC will not designate fixed or estimated amounts for the three different funding categories and will make grant awards for the three categories within the total amount of funding available.

E. Grant Terms

Applicants to the TIG program may propose grant terms between 12 and 36 months for general category projects and between 12 and 18 months for Technology Improvement Projects. For the new Adoption, Expansion, and Enhancement category, the grant term is set at 24 months. The grant term for all

TIGs is expected to commence on November 1, 2024.

III. Grant Application Process

A. Technology Initiative Grant Application Process

The TIG application process will be administered in LSC's unified grants management system, GrantEase. Applicants in the General TIG category must first submit a pre-application to LSC in GrantEase by March 11, 2024, at 11:59 p.m. ET, to be considered for a grant. After review by LSC staff, LSC's president decides which applicants will be asked to submit a full application. Applicants will be notified of approval to submit a full application by late April 2024. Full applications are due to LSC in the GrantEase system on June 3, 2024, at 11:59 p.m. ET. Once received, full applications will undergo a rigorous review by LSC staff. LSC's president makes the final decisions on funding for the Technology Initiative Grant program.

As noted above, applicants applying for Technology Improvement Project funding or in the Adoption, Expansion, and Enhancement category are not required to submit pre-applications. LSC will launch the online application system for Technology Improvement Projects by April 1, 2024, and set a submission deadline of May 19, 2024, at 11:59 p.m. ET. LSC will launch the online application system for Adoption, Expansion, and Enhancement grants in late April 2024 and applications will be due to LSC in GrantEase on June 3, 2024, at 11:59 p.m. ET. LSC follows a similar review process for applications in these categories, which includes LSC staff conducting a rigorous review of all proposals and the LSC president making final funding decisions.

B. Late or Incomplete Applications

LSC may consider a request to submit a pre-application after the deadline, but only if the applicant has submitted an email to techgrants@lsc.gov explaining the circumstances that caused the delay prior to the pre-application deadline. Communication with LSC staff, including assigned program liaisons, is not a substitute for sending a formal request and explanation to techgrants@lsc.gov. At its discretion, LSC may consider incomplete applications. LSC will determine whether it will consider late or incomplete applications on a case-by-case basis.

C. Multiple Pre-Applications

Applicants may submit multiple pre-applications. If applying for multiple grants that require pre-applications,

applicants should submit separate pre-applications for each funding request.

D. Additional Information and Guidelines

Additional guidance and instructions on the pre-application and application processes for Technology Initiative Grants will be available and regularly updated at <https://www.lsc.gov/grants/technology-initiative-grant-program>.

(Authority: 42 U.S.C. 2996g(e).)

Dated: January 17, 2024.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2024-01205 Filed 1-22-24; 8:45 am]

BILLING CODE 7050-01-P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No 23-CRB-0012-WR (2026-2030)]

Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies To Facilitate Those Performances (Web VI)

Correction

In notice document 2023-28516 appearing on pages 812-814 in the issue of Friday, January 5, 2024, make the following correction:

On page 812 in the second column, after the **DATES** heading, in the second and third lines, "February 6, 2023" should read "February 5, 2024".

[FR Doc. C1-2023-28516 Filed 1-22-24; 8:45 am]

BILLING CODE 0099-10-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-23-0016; NARA-2024-012]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on [regulations.gov](https://www.regulations.gov) for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite

public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by March 11, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-23-0015/document>. This is a direct link to the schedules posted in the docket for this notice on [regulations.gov](https://www.regulations.gov). You may submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on [regulations.gov](https://www.regulations.gov) and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via [regulations.gov](https://www.regulations.gov), you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Strategy and Performance Division, by email at regulation_comments@nara.gov or at 301-837-2902. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as “other” documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a “Consolidated Reply” summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. Once approved by NARA, records schedules provide mandatory instructions on what

happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records’ administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government’s activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist’s consideration process.

Schedules Pending

1. Department of Defense, Defense Contract Audit Agency, Records related to Security and Intelligence (DAA–0372–2022–0001).
2. Department of Health and Human Services, Office of Medicare Hearings and Appeals, Administrative Law Judge and Attorneys Files (DAA–0468–2023–0003).
3. Department of Homeland Security, Federal Emergency Management Agency, Mission Training Records (DAA–0311–2022–0001).
4. Department of Homeland Security, U.S. Citizenship and Immigration Services, Teacher Training for Citizenship Education Records (DAA–0566–2022–0002).
5. Department of Homeland Security, U.S. Customs and Border Protection, Promissory Notes (DAA–0568–2023–0003).
6. Department of the Navy, Agency-Wide, Telecommunications and Information Technology (DAA–NU–2019–0009).
7. Central Intelligence Agency, Agency-wide, Mission Related Data (DAA–0263–2018–0001).

8. National Security Agency, Agency-wide, Transaction Monitoring (DAA–0457–2024–0001).

Laurence Brewer,
Chief Records Officer for the U.S. Government.

[FR Doc. 2024–01210 Filed 1–22–24; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0064]

Information Collection: Standard Specification for the Granting of Patent Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, “Standard Specification for the Granting of Patent Licenses.”

DATES: Submit comments by February 22, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0064 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0064.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The supporting statement is available in ADAMS under Accession No. ML23342A145.

- *NRC's PDR*: The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer*: A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not

routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "10 CFR part 81, 'Standard Specification for the Granting of Patent Licenses.'" The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on September 18, 2023, 88 FR 63981.

1. *The title of the information collection*: Part 81 of title 10 of the *Code of Federal Regulations* (10 CFR), "Standard Specification for the Granting of Patent Licenses."

2. *OMB approval number*: 3150–0121.

3. *Type of submission*: Extension.

4. *The form number, if applicable*: Not applicable.

5. *How often the collection is required or requested*: Applications for licenses are submitted once. Other reports are submitted annually, or as other events require.

6. *Who will be required or asked to respond*: Applicants for and holders of NRC licenses to NRC inventions.

7. *The estimated number of annual responses*: 3.5.

8. *The estimated number of annual respondents*: 10.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request*: 10; however, no applications are anticipated during the next 3 years.

10. *Abstract*: As specified in 10 CFR part 81, the NRC may grant nonexclusive licenses or limited exclusive licenses to its patented inventions to responsible applicants. Applicants for licenses to NRC inventions are required to provide information which may provide the basis for granting the requested license. In addition, all license holders must submit periodic reports on efforts to bring the invention to a point of practical application and the extent to which they are making the benefits of the invention reasonably accessible to the public. Exclusive license holders must submit additional information if they seek to extend their licenses, issue sublicenses, or transfer the licenses. In

addition, if requested, exclusive license holders must promptly supply to the United States Government copies of all pleadings and other papers filed in any patent infringement lawsuit, as well as evidence from proceedings relating to the licensed patent.

Dated: January 17, 2024.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–01155 Filed 1–22–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0025]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by February 22, 2024. A request for a hearing or petitions for leave to intervene must be filed by March 25, 2024. This monthly notice includes all amendments issued, or proposed to be issued, from December 8, 2023, to January 4, 2024. The last monthly notice was published on December 26, 2023.

ADDRESSES: You may submit comments by any of the following methods however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0025. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email:

Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1506; email: *Kay.Goldstein@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2024-0025, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0025.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to *PDR.Resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2024-0025, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees’ analyses provided, consistent with section 50.91 of title 10 of the *Code of Federal Regulations* (10 CFR) “Notice for public comment; State consultation,” are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission’s regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the

expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission’s “Agency Rules of Practice and Procedure” in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the “Electronic Submissions (E-Filing)” section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the

Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056 and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>).

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by

telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT REQUESTS

Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC

Docket No(s)	50–395.
Application date	November 9, 2023, as supplemented by letter dated November 28, 2023.
ADAMS Accession No.	ML23317A224, ML23332A194.
Location in Application of NSHC	Pages 27–29 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would modify the Virgil C. Summer Nuclear Station (VCSNS) Technical Specification (TS) Limiting Condition for Operation (LCO) 3.8.3.1, Action C, concerning inoperable Alternating Current Inverters of TS 3/4.8.3. The proposed license amendment would extend the Allowed Outage Time for VCSNS's TS LCO 3.8.3.1 Action C in the case of an inoperable inverter.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W. S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	G. Ed Miller, 301–415–2481.

Duke Energy Carolinas, LLC; Oconee Nuclear Station, Units 1, 2, and 3; Oconee County, SC

Docket No(s)	50–269, 50–270, 50–287.
Application date	November 16, 2023.
ADAMS Accession No.	ML23320A111.
Location in Application of NSHC	Pages 181–183 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specification 5.5.2, “Containment Leakage Rate Testing Program” for a one-time extension of the Units 1, 2, and 3 Type A Leak Rate Test frequency.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 4720 Piedmont Row Dr., Charlotte, NC 28210.
NRC Project Manager, Telephone Number	Jack Minzer Bryant, 301–415–0610.

Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4; Miami-Dade County, FL

Docket No(s)	50–250, 50–251.
Application date	October 11, 2023.
ADAMS Accession No.	ML23285A035.
Location in Application of NSHC	Pages 12–14 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendments would revise the Turkey Point technical specifications (TS) by incorporating changes to TS 3.7.13, “Fuel Storage Pool Boron Concentration,” TS 3.7.14, “Spent Fuel Storage,” and TS 4.3, “Fuel Storage” to allow for an updated spent fuel pool criticality safety analysis which accounts for the impact on the spent fuel from a proposed transition to 24-month fuel cycles.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Senior Attorney 801 Pennsylvania Ave., NW, Suite 220 Washington, DC 20004.
NRC Project Manager, Telephone Number	Michael Mahoney, 301–415–3867

Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Goodhue County, MN

Docket No(s)	50–282, 50–306.
Application date	September 28, 2023, as supplemented by letter dated December 5, 2023.
ADAMS Accession No.	ML23271A205, ML23339A060.
Location in Application of NSHC	Pages 5–6 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specification 3.8.1, “AC Sources-Operating,” and Surveillance Requirement 3.8.1.2, Note 3, to remove details of a modified diesel generator start.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number	Brent Ballard, 301–415–0680.

Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN

Docket No(s)	50–263.
Application date	November 10, 2023.
ADAMS Accession No.	ML23317A122.
Location in Application of NSHC	Pages 7–9 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would revise Technical Specification 3.8.6, “Battery Parameters,” and Surveillance Requirement 3.8.6.6, “Acceptance criteria” for the battery capacity of the 125-volt direct current batteries.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number	Brent Ballard, 301–415–0680.

LICENSE AMENDMENT REQUESTS—Continued

Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Luzerne County, PA

Docket No(s)	50–387, 50–388.
Application date	November 2, 2023.
ADAMS Accession No	ML23306A198.
Location in Application of NSHC	Pages 3–5 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendments would revise the technical specifications by adopting TSTF [Technical Specification Task Force]-563, “Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program” (ML17130A819), with plant specific variations.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Damon D. Obie, Esq, 1780 Hughes Landing Blvd., Suite 800, The Woodlands, TX 77380.
NRC Project Manager, Telephone Number	Audrey Klett, 301–415–0489.

Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Luzerne County, PA

Docket No(s)	50–387, 50–388.
Application date	November 29, 2023.
ADAMS Accession No	ML23333A214.
Location in Application of NSHC	Pages 2 and 3 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendments would revise the technical specifications (TS) by adopting TSTF [Technical Specification Task Force]-568, “Revise Applicability of BWR [Boiling Water Reactor]/4 TS 3.6.2.5 and TS 3.6.3.2” (ML19141A122), with plant-specific variations.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Damon D. Obie, Esq, 1780 Hughes Landing Blvd., Suite 800, The Woodlands, TX 77380.
NRC Project Manager, Telephone Number	Audrey Klett, 301–415–0489.

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1; Coffey County, KS

Docket No(s)	50–482.
Application date	November 16, 2023.
ADAMS Accession No	ML23320A277.
Location in Application of NSHC	Pages 7–8 of Attachment I.
Brief Description of Amendment(s)	The proposed amendment would revise the ventilation filter testing program in the technical specifications (TS) 5.5.11.b and correct an administrative error in TS 5.5.11.b, 5.5.11.c, 5.5.11.d, and 5.5.11.f by changing the word absorber to adsorber.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Chris Johnson, Corporate Counsel Director, Evergy, One Kansas City Place, 1K-Missouri HQ 16, 1200 Main Street, Kansas City, MO 64105.
NRC Project Manager, Telephone Number	Samson Lee, 301–415–3168.

III. Notices of Issuances of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating

license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, were published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has

made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission’s letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the “Obtaining Information and Submitting Comments” section of this document.

LICENSE AMENDMENT ISSUANCES

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Unit Nos. 1 and 2, Ogle County, IL

Docket No(s)	50–454, 50–455, 50–456, 50–457.
Amendment Date	December 11, 2023.
ADAMS Accession No	ML23277A003.

LICENSE AMENDMENT ISSUANCES—Continued

Amendment No(s)	Braidwood 234 (Unit 1), 234 (Unit 2); Byron 234 (Unit 1), 234 (Unit 2).
Brief Description of Amendment(s)	The amendments changed the Completion Time (CT) of Required Action B.1 in Technical Specification (TS) 3.5.1, "Accumulators," from 1 hour to 24 hours. The changes are consistent with Technical Specification Task Force (TSTF) Traveler TSTF-370, "Increase Accumulator Completion Time From 1 Hour to 24 Hours"; (ML003771348). A model safety evaluation relating to this TS improvement was published for comment in the Federal Register on July 15, 2002 (67 FR 46542), and a model application was published on March 12, 2003 (68 FR 11880), as part of the Consolidated Line Item Improvement Process.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Constellation Energy Generation, LLC; Calvert Cliffs Nuclear Power Plant, Unit 1; Calvert County, MD

Docket No(s)	50-317.
Amendment Date	January 2, 2024.
ADAMS Accession No	ML23304A064.
Amendment No(s)	349.
Brief Description of Amendment(s)	The amendment revised the Calvert Cliffs Nuclear Plant, Unit 1, licensing basis by modifying the long-term coupon surveillance program (ML082180478), previously approved by NRC staff. The changes include revising the weight change acceptance criteria to less than 38 percent change in weight for two coupons in a packet sample location (combined weight of upper and lower coupon by location) compared to the baseline, modifying the visual examination criteria to exclude degradation from packet configuration-related erosion and clarifying the areal density testing frequency and associated corrective actions.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Constellation Energy Generation, LLC; Clinton Power Station, Unit No. 1; DeWitt County, IL; Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL; Constellation Energy Generation, LLC; LaSalle County Station, Units 1 and 2; LaSalle County, IL; Constellation Energy Generation, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York County, PA; Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL; Nine Mile Point Nuclear Station, LLC and Constellation Energy Generation, LLC; Nine Mile Point Nuclear Station, Unit 2; Oswego County, NY

Docket No(s)	50-461, 50-237, 50-249, 50-373, 50-374, 50-410, 50-277, 50-278, 50-254, 50-265.
Amendment Date	December 13, 2023.
ADAMS Accession No	ML23305A140.
Amendment No(s)	Clinton—251; Dresden—283 (Unit 2), 276 (Unit 3); LaSalle—261 (Unit 1), 246 (Unit 2); Nine Mile Point—195 (Unit 2); Peach Bottom—344 (Unit 2), 347 (Unit 3); Quad Cities—297 (Unit 1), 293 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the technical specifications (TS) for each facility in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF-580, Revision 1, "Provide Exception from Entering Mode 4 With No Operable [Residual Heat Removal] RHR Shutdown Cooling" (ML21025A232). Specifically, the proposed changes provide a TS exception to entering Mode 4 if both required RHR shutdown cooling subsystems are inoperable. By letter dated October 20, 2023, the licensee withdrew its request to adopt TSTF-580 for the James A. FitzPatrick Nuclear Power Plant (ML23293A103).
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Constellation Energy Generation, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA

Docket No(s)	50-352, 50-353.
Amendment Date	December 14, 2023.
ADAMS Accession No	ML23321A236.
Amendment No(s)	262 (Unit 1), 224 (Unit 2).
Brief Description of Amendment(s)	The amendments revised and added technical specifications for the control room emergency fresh air supply and air conditioning systems, consistent with Technical Specifications Task Force Traveler 477, Revision 3 (ML062510321), with plant-specific variations.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

DTE Electric Company; Fermi, Unit 2; Monroe County, MI

Docket No(s)	50-341.
Amendment Date	December 8, 2023.
ADAMS Accession No	ML23310A149.
Amendment No(s)	227.

LICENSE AMENDMENT ISSUANCES—Continued

Brief Description of Amendment(s)	The amendment modified the Fermi 2 technical specification (TS) to revise the emergency diesel generator steady state frequency and voltage values in the Surveillance Requirements (SRs) for TS 3.8.1, "AC Sources—Operating." Specifically, the proposed TS changes lowered the upper bound of the SR steady state voltage, lowered the upper bound of the SR steady state frequency, and raised the lower bound of the SR steady state frequency.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Energy Northwest; Columbia Generating Station; Benton County, WA

Docket No(s)	50–397.
Amendment Date	December 7, 2023.
ADAMS Accession No	ML23288A000.
Amendment No(s)	272.
Brief Description of Amendment(s)	The amendment revised certain Surveillance Requirements (SRs) to add exceptions that consider the SR to be met when automatic valves or dampers are locked, sealed, or otherwise secured in the actuated position. The revisions are consistent with Technical Specifications Task Force Traveler 541, Revision 2, "Add Exceptions to Surveillance Requirements for Valves and Dampers Locked in the Actuated Position."
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Holtec Decommissioning International, LLC; Palisades Nuclear Plant; Van Buren County, MI

Docket No(s)	50–255.
Amendment Date	December 27, 2023.
ADAMS Accession No	ML23236A004.
Amendment No(s)	274.
Brief Description of Amendment(s)	The amendment revised the Palisades Nuclear Plant Post-Shutdown Emergency Plan and emergency action level scheme to reflect the permanently defueled condition following a sufficient decay of the spent fuel, such that the risk of an offsite radiological release is significantly lower and the types of possible accidents are significantly fewer.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Holtec Decommissioning International, LLC and Holtec Indian Point 2, LLC; Indian Point Station Unit No. 2; Westchester County, NY

Docket No(s)	50–247.
Amendment Date	November 16, 2023.
ADAMS Accession No	ML23050A003.
Amendment No(s)	297 (Unit 2).
Brief Description of Amendment(s)	The amendment revised the license and technical specifications to reflect the removal of all spent nuclear fuel from the Indian Point Nuclear Generating Unit 2 spent fuel pit (SFP) and its transfer to dry cask storage within an onsite independent spent fuel storage installation (ISFSI). These changes reflect the permanently shut down status of the decommissioning facility, as well as the reduced scope of structures, systems, and components necessary to ensure plant safety now that all spent fuel has been permanently moved to the Indian Point Energy Center ISFSI.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Station Unit Nos. 1, 2 and 3; Westchester County, NY

Docket No(s)	50–247, 50–003, 50–286.
Amendment Date	November 13, 2023.
ADAMS Accession No	ML23064A000.
Amendment No(s)	65 (Unit 1), 296 (Unit 2), 273 (Unit 3).
Brief Description of Amendment(s)	The amendments revised the site emergency plan and emergency action level scheme to address the permanently defueled condition of Indian Point Energy Center.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Station Unit Nos. 1, 2 and 3; Westchester County, NY

Docket No(s)	50–003, 50–247, 50–286.
Amendment Date	November 17, 2023.
ADAMS Accession No	ML23100A117.
Amendment No(s)	66 (Unit 1), 298 (Unit 2), 274 (Unit 3).
Brief Description of Amendment(s)	The amendments approved the removal of the Cyber Security Plan Licensing Condition at Indian Point Energy Center.

LICENSE AMENDMENT ISSUANCES—Continued

Public Comments Received as to Proposed NSHC (Yes/No).	No.
Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Station Unit Nos. 1, 2 and 3; Westchester County, NY	
Docket No(s)	50–247, 50–286.
Amendment Date	November 29, 2023.
ADAMS Accession No	ML23242A277.
Amendment No(s)	299 (Unit 2), 275 (Unit 3).
Brief Description of Amendment(s)	The amendments approved the revision of Indian Point Unit 2 and Unit 3 technical specifications and modified Staffing Requirements following permanent transfer of all spent fuel to dry storage. This includes prohibiting the transfer of Indian Point Nuclear Generating Unit No. 2 (IP2) and 3 (IP3) spent fuels to the IP2 or IP3 spent fuel pit.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Station Unit Nos. 1, 2 and 3; Westchester County, NY	
Docket No(s)	50–003, 50–247, 50–286.
Amendment Date	December 5, 2023.
ADAMS Accession No	ML23326A132.
Amendment No(s)	67 (Unit 1), 300 (Unit 2), 276 (Unit 3).
Brief Description of Amendment(s)	The amendments revised the Indian Point Energy Center (IPEC) Emergency Plan to reflect the requirements associated with emergency preparedness necessary for the independent spent fuel storage installation (ISFSI) only configuration, consistent with the permanent removal of all spent fuel from the IPEC spent fuel pool.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Station Unit Nos. 1, 2 and 3; Westchester County, NY	
Docket No(s)	50–003, 50–247, 50–286.
Amendment Date	December 5, 2023.
ADAMS Accession No	ML23339A044.
Amendment No(s)	68 (Unit 1), 301 (Unit 2), 277 (Unit 3).
Brief Description of Amendment(s)	The amendments revised the Holtec Decommissioning International, LLC (HDI) Physical Security Plan to reflect the requirements associated with the security changes for the independent spent fuel storage installation only configuration, consistent with the permanent removal of all spent fuel from the Indian Point Energy Center spent fuel pool.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Docket No(s)	50–298.
Amendment Date	January 3, 2024.
ADAMS Accession No	ML23334A201.
Amendment No(s)	274.
Brief Description of Amendment(s)	The amendment adopted Technical Specifications Task Force (TSTF) Traveler TSTF–551, Revision 3, “Revise Secondary Containment Surveillance Requirements.” Specifically, the amendment revised Technical Specification 3.6.4.1, “Secondary Containment,” surveillance requirements (SRs) to allow the secondary containment vacuum limit to not be met provided that the standby gas treatment system remains capable of establishing the required secondary containment vacuum, and revised the SR to permit secondary containment access opening to be open to permit entry and exit.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
NextEra Energy Seabrook, LLC; Seabrook Station, Unit No. 1; Rockingham County, NH	
Docket No(s)	50–443.
Amendment Date	December 22, 2023.
ADAMS Accession No	ML23312A182.
Amendment No(s)	172.
Brief Description of Amendment(s)	The amendment modified the Seabrook Station, Unit No. 1, TS (Technical Specification) 3/4.7.4, “Service Water System/Ultimate Heat Sink,” by increasing the allowable outage time for one inoperable cooling tower service water loop or one cooling tower cell. Additionally, the amendment made an editorial correction to TS Section 1.9.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCES—Continued

Nine Mile Point Nuclear Station, LLC and Constellation Energy Generation, LLC; Nine Mile Point Nuclear Station, Unit 1; Oswego County, NY	
Docket No(s)	50–220.
Amendment Date	December 7, 2023.
ADAMS Accession No	ML23291A464.
Amendment No(s)	251.
Brief Description of Amendment(s)	The amendment revised the Nine Mile Point Nuclear Station, Unit 1, Renewed Facility Operating License No. DPR–63 to add a new license condition to allow for the implementation of 10 CFR 50.69, “Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.”
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA	
Docket No(s)	50–424, 50–425.
Amendment Date	December 22, 2023.
ADAMS Accession No	ML23317A207.
Amendment No(s)	223 (Unit 1), 206 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Technical Specification (TS) 2.1.1, “Reactor Coolant Safety Limits,” TS 3.3.1, “Reactor Trip System (RTS) Instrumentation,” TS 3.4.1, “Reactor Coolant System (RCS) Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,” and TS 5.6.5, “Core Operating Limits Report (COLR),” to adopt most of the TS and COLR changes described in Appendix A and Appendix B of Westinghouse topical report WCAP–14483–A, to relocate several cycle-specific parameter limits from the TS to the COLR. The amendments follow the guidance of technical specification task force (TSTF) change traveler TSTF–339–A, Revision 2. Along with the parameter relocations, the amendments also modify the Vogtle, Units 1 and 2, TS 5.6.5, to include WCAP–8745–P–A and WCAP–11397–P–A, and to revise the TS applicability for the WCAP–9272–P–A, in the list of the NRC approved methodologies used to develop the cycle-specific COLR. In addition, the amendments revise an error to the TS 3.3.1 depiction of an equation.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA	
Docket No(s)	52–025, 52–026.
Amendment Date	December 19, 2023.
ADAMS Accession No	ML23353A170.
Amendment No(s)	197 (Unit 3), 193 (Unit 4).
Brief Description of Amendment(s)	The amendments changed the combined license (COL) Appendix A, Technical Specifications (TS) designated by Southern Nuclear Operating Company as License Amendment Request (LAR) 22–002. The amendments changed the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, COL Appendix A, TS, specifically to revise the VEGP, Units 3 and 4, COL Appendix A, TS 3.8.3, “Inverters—Operating,” to extend the completion time for Required Action A.1 from 24 hours to 14 days. There is an additional unrelated change to correct a misspelling in VEGP, Units 3 and 4, TS 3.3.9, “Engineered Safety Feature Actuation System (ESFAS) Manual Initiation.”
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA	
Docket No(s)	52–025, 52–026.
Amendment Date	November 28, 2023.
ADAMS Accession No	ML23326A154 (Package).
Amendment No(s)	195 (Unit 3), 192 (Unit 4).
Brief Description of Amendment(s)	The amendments changed combined license (COL) Appendix A, Technical Specifications (TS), designated by Southern Nuclear Operating Company as License Amendment Request 23–006R1 in its application dated May 17, 2023. The amendments involve changes to the VEGP, Units 3 and 4, COL Appendix A, to revise TS 3.1.9, Required Action B.1 to impose a more restrictive action and add an allowance (a note) for separate TS Condition entry along with associated clarifying and consistency changes in that TS section.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Somervell County, TX	
Docket No(s)	50–445, 50–446.
Amendment Date	December 20, 2023.
ADAMS Accession No	ML23319A387.
Amendment No(s)	185 (Unit 1) and 185 (Unit 2).

LICENSE AMENDMENT ISSUANCES—Continued

Brief Description of Amendment(s)	The amendments revised the technical specifications (TSs) to adopt WCAP-16996-P-A, Revision 1, “Realistic LOCA [Loss-of-Coolant Accident] Evaluation Methodology Applied to the Full Spectrum of Break Sizes (FULL SPECTRUM LOCA Methodology) (FSLOCA); revised the TS reactor core safety limit to reflect the peak fuel centerline melt temperature specified in WCAP-17642-P-A, Revision 1, “Westinghouse Performance Analysis and Design Model (PAD5)””; and revised the TS reactor core fuel assemblies design feature by removing the discussion of Zircalloy fuel rods and ZIRLO lead test assemblies.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

IV. Notice of Issuances of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Circumstances or Emergency Situation)

Since publication of the last monthly notice, the Commission has issued the following amendment. The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent circumstances or emergency situation associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed NSHC determination, and opportunity for a hearing.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the

plant’s licensed power level (an emergency situation), the Commission may not have had an opportunity to provide for public comment on its NSHC determination. In such case, the license amendment has been issued without opportunity for comment prior to issuance. Nonetheless, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved.

For those amendments that involve an emergency situation, the Commission is now providing an opportunity to comment on the final NSHC determination for each action; comments should be submitted in accordance with Section I of this notice within 30 days of the date of this notice. Any comments received within 30 days of the date of publication this notice will be considered.

For those amendments that have not been previously noticed in the **Federal Register**, within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect

to the action. Petitions shall be filed in accordance with the guidance concerning the Commission’s “Agency Rules of Practice and Procedure” in 10 CFR part 2 as discussed in section II.A of this document.

Unless otherwise indicated, the Commission has determined that the amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to these actions, see the amendment and associated documents such as the Commission’s letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession number(s) for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the “Obtaining Information and Submitting Comments” section of this document.

LICENSE AMENDMENT ISSUANCE—EMERGENCY CIRCUMSTANCES

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL

Docket No(s)	50–254, 50–265.
Amendment Date	December 17, 2023.
ADAMS Accession No	ML23349A162.
Amendment No(s)	Unit 1–298, Unit 2–294.
Brief Description of Amendment(s)	The amendments revised Technical Specification 3.8.1, “AC [alternating current] Sources-Operating,” Condition B, “One required DG [diesel generator] inoperable,” required action B.4, “Restore required DG to OPERABLE status,” to provide a one-time extension of the completion time from 7 days to 14 days. The amendments also revised surveillance requirements for testing of the Quad Cities Nuclear Power Station, Unit 2 DG and the 1/2 DG during the extended period that the Quad Cities Nuclear Power Station, Unit 1 DG is inoperable.
Local Media Notice (Yes/No)	No.
Public Comments Requested as to Proposed NSHC (Yes/No).	No.

Dated: January 18, 2024.

For the Nuclear Regulatory Commission.

Jamie M. Heisserer,

*Deputy Director, Division of Operating
Reactor Licensing, Office of Nuclear Reactor
Regulation.*

[FR Doc. 2024-01255 Filed 1-22-24; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99353; File No. SR-
NYSEARCA-2024-08]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend a Representation Relating to the Grayscale Bitcoin Trust

January 17, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 16, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend a representation relating to the Grayscale Bitcoin Trust (BTC) (the “Trust”), shares of which are currently listed and traded on the Exchange pursuant to NYSE Arca Rule 8.201-E. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved the listing and trading of shares of the Trust (the “Shares”) on the Exchange pursuant to NYSE Arca Rule 8.201-E on January 10, 2024.⁴ NYSE Arca Rule 8.201-E governs the listing and trading of Commodity-Based Trust Shares, which are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. The Shares are issued by the Trust, a Delaware statutory trust organized on September 13, 2013.⁵

The purpose of this rule filing is to amend a representation set forth in the Exchange’s previous rule filing to list and trade Shares of the Trust.⁶ Amendment No. 2 represented that, in connection with the creation and redemption of Shares pursuant to Cash Orders, the term “Cash Account” would mean “the account maintained by the Transfer Agent in the name of Grayscale Securities, LLC, designated as ‘Special Account for the Exclusive Benefit of Customers of Grayscale Securities, LLC,’ for purposes of receiving cash from, and distributing cash to, Authorized Participants in connection with creations and redemptions pursuant to Cash Orders. For the avoidance of

doubt, the Trust shall have no interest (beneficial, equitable or otherwise) in the Cash Account or any cash held therein.”⁷

The Exchange proposes to amend this representation to redefine Cash Account to remove reference to Grayscale Securities, LLC, such that the term Cash Account means the account maintained by the Transfer Agent for purposes of receiving cash from, and distributing cash to, Authorized Participants in connection with creations and redemptions pursuant to Cash Orders. This proposed change is intended to clarify that the Commission has not approved Grayscale Securities, LLC or any other broker-dealer to own or operate the Cash Account used to transfer cash to the entity purchasing Bitcoin as part of the creation process or receive cash from the entity that buys or sells Bitcoin as part of the redemption process. The purchase and sale of Bitcoin as part of the creation and redemption process will be undertaken by an entity that is not registered as a broker-dealer. The Exchange believes that this proposed change would promote clarity and transparency with respect to the operation of the Cash Account, to the benefit of all market participants.

Except for this change, all other representations in Amendment No. 2 remain unchanged and will continue to constitute continuing listing requirements. In addition, the Trust will continue to comply with the terms of the Approval Order and the requirements of Rule 8.201-E.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would update a representation in Amendment

⁴ See Securities Exchange Act Release No. 99306 (January 10, 2024) (File Nos. SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Approval Order”).

⁵ On October 19, 2023, the Trust filed a registration statement on Form S-3 under the Securities Act (File No. 333-275079) (the “Registration Statement”). On November 22, 2023, the Trust filed Amendment No. 1 to the Registration Statement on Form S-3. On December 26, 2023, the Trust filed Amendment No. 2 to the Registration Statement on Form S-3. On January 2, 2024, the Trust filed Amendment No. 3 to the Registration Statement on Form S-3. On January 9, 2024, the Trust filed Amendment No. 4 to the Registration Statement. The descriptions of the Trust and Shares contained herein are based, in part, on the Registration Statement.

⁶ See Securities Exchange Act Release No. 99298 (January 9, 2024) (SR-NYSEARCA-2021-90) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)) (“Amendment No. 2”).

⁷ Amendment No. 2 at 56–57. Unless otherwise specified, capitalized terms used herein have the same meaning as in Amendment No. 2.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

No. 2 regarding the Cash Account used in connection with creation and redemption of Shares. The proposed change would add clarity to the description of the operation of the Cash Account, to the benefit of all market participants. Except for this change, all other representations made in Amendment No. 2 remain unchanged and will continue to constitute continuing listing requirements for the Fund. Accordingly, the Exchange believes that this proposed rule change raises no novel regulatory issues.

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 purpose of the Act. As noted above, the proposed rule change is intended only to clarify a representation regarding the Cash Account and would facilitate the continued listing and trading of Shares of the Fund on the Exchange, thereby promoting competition among various exchange-traded products, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change is intended only to clarify a representation in Amendment No. 2 relating to the Cash Account. Except for this change, all other representations made in Amendment No. 2 remain unchanged and will continue to constitute continuing listing requirements for the Shares of the Trust. According to the Exchange, the Trust also will continue to comply with the terms of the Approval Order and the requirements of NYSE Arca Rule 8.201-E. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal provides a clarification to a representation of the Exchange and does not raise any new or novel regulatory issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-08 on the subject line.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2024-08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-08 and should be submitted on or before February 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-01187 Filed 1-22-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-614; OMB Control No. 3235-0682]

Proposed Collection; Comment Request; Extension: Rule 13h-1 and Form 13H

Upon Written Request, Copies Available From: Securities and Exchange

¹⁶ 17 CFR 200.30-3(a)(12), (59).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

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 existing collection of information provided for in Rule 13h-1 (17 CFR 240.13h-1) and Form 13H—registration of large traders¹ submitted pursuant to Section 13(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (“Exchange Act”). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 13h-1 and Form 13H under Section 13(h) of the Exchange Act established a large trader reporting framework.² The framework assists the Commission in identifying and obtaining certain baseline information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets.

The identification, recordkeeping, and reporting framework provides the Commission with a mechanism to identify large traders and obtain additional information on their trading activity. Specifically, the system requires large traders to identify themselves to the Commission and file certain interim updates with the Commission on Form 13H. Upon receipt of Form 13H, the Commission issues a unique identification number to the large trader, which the large trader then provides to its registered broker-dealers. Certain registered broker-dealers are required to maintain transaction records for each large trader and are required to report that information to the Commission upon request.³ In addition,

certain registered broker-dealers are required to adopt procedures to monitor their customers for activity that would trigger the identification requirements of the rule.

The respondents to the collection of information required by Rule 13h-1 and Form 13H are large traders and registered broker-dealers. The Commission estimates that the total annual time burden associated with Rule 13h-1 and Form 13H is approximately 131,415 hours per year. This burden is comprised of 31,140 hours for initial filings by large traders on Form 13H, 75,300 hours for updates by large traders, 22,200 hours for broker-dealer reporting, and 2,775 hours for broker-dealer monitoring.

Compliance with Rule 13h-1 is mandatory. The information collection under proposed Rule 13h-1 is considered confidential subject to the limited exceptions provided by the Freedom of Information Act.⁴

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 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 March 25, 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: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

registered broker-dealers through the consolidated audit trail, to which the agency has access, to support regulatory and enforcement activities. This data includes the time of each trade and the LTID number of the person exercising investment discretion over the trade, the latter of which is assigned by the Commission pursuant to Rule 13h-1.

⁴ See 5 U.S.C. 552 and 15 U.S.C. 78m(h)(7).

Dated: January 18, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-01271 Filed 1-22-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99355; File No. SR-NYSE-2023-09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of Proposed Rule Change To Amend the NYSE Listed Company Manual To Adopt Listing Standards for Natural Asset Companies

January 17, 2024.

On September 27, 2023, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE Listed Company Manual to adopt a new listing standard for the listing of Natural Asset Companies (“NAC”). The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.³ On November 7, 2023, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 21, 2023, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On January 17, 2024, the Exchange withdrew the proposed rule change (SR-NYSE-2023-09).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98665 (Sept. 29, 2023), 88 FR 68811 (Oct. 4, 2023) (SR-NYSE-2023-09). Comments received on the NAC Proposal are available at <https://www.sec.gov/comments/sr-nyse-2023-09/srnyse202309.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 98879 (Nov. 7, 2023), 88 FR 78075 (Nov. 14, 2023). The Commission designated January 2, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 99225 (Dec. 21, 2023), 88 FR 89788 (Dec. 28, 2023).

⁸ 17 CFR 200.30-3(a)(12).

¹ Rule 13h-1(a)(1) defines “large trader” as any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level or voluntarily registers as a large trader by filing electronically with the Commission Form 13H.

² See Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46959 (August 3, 2011).

³ The Commission, pursuant to Rule 17a-25 (17 CFR 240.17a-25), currently collects transaction data from registered broker-dealers through the Electronic Blue Sheets (“EBS”) system to support its regulatory and enforcement activities. The large trader framework added two new fields, the time of the trade and the identity of the trader, to the EBS system. Additionally, pursuant to Rule 613 (17 CFR 242.613), the Commission requires each national securities exchange and national securities association to collect transaction data from

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01189 Filed 1–22–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99383; File No. SR–IEX–2024–02]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Remote Inspection Relief to IEX Members To Include Calendar Year 2024 Inspection Obligations Through the Earlier of the Effective Date of the Recently Approved FINRA Pilot Program on Remote Inspections, or June 30, 2024

January 17, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on January 8, 2024, the Investors Exchange LLC (“IEX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to 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

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b–4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend Supplementary Material .15 of IEX Rule 5.110 (Supervision) to extend the temporary remote inspection relief to IEX Members⁶ to include calendar year 2024 inspection obligations through the earlier of the effective date of the recently-approved FINRA pilot program on remote inspections (the “Remote Inspections Pilot Program”)⁷, or June 30, 2024.

The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁸ and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.⁹

The text of the proposed rule change is available at the Exchange’s website at <https://www.iexexchange.io/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX proposes to extend the temporary remote inspection relief of Supplementary Material .15 to IEX Rule 5.110 to IEX Members to include calendar year 2024 inspection obligations through the earlier of the effective date of the Remote Inspections Pilot Program, or June 30, 2024. IEX makes this proposal to provide its Members continuity related to conducting inspections as part of satisfying the obligations of IEX Rule 5.110(c) (Internal Inspections) at offices and locations requiring inspection during the first half of calendar year 2024.¹⁰ IEX believes the proposed

extension is necessary to provide firms the time to prepare for the implementation of the Remote Inspections Pilot Program. The SEC approved the Remote Inspections Pilot Program on November 17, 2023, but FINRA has not yet announced the implementation timeline.¹¹ IEX plans to make a rule filing to incorporate the Remote Inspections Pilot Program into IEX Rule 5.110 (and specify the end date of the temporary remote inspection relief of Supplementary Material .15 to IEX Rule 5.110) after FINRA provides details about the implementation plan in the Pilot Program Regulatory Notice.

The COVID–19 pandemic caused a host of operational disruptions to the securities industry and impacted IEX Members, regulators, investors, and other stakeholders. In response to the pandemic, IEX adopted Supplementary Material .15 of IEX Rule 5.110 to provide Members the temporary option of satisfying their inspection obligations for offices of supervisory jurisdiction, branch offices, or non-branch locations under IEX Rule 5.110 (Supervision) remotely for calendar years 2021, 2022, and 2023, subject to specified conditions,¹² due to the logistical challenges of going on-site while public health and safety concerns related to COVID–19 persisted. Supplementary Material .15 of IEX Rule 5.110 lapsed on December 31, 2023.

The pandemic accelerated the industry’s adoption of a broad remote work environment and IEX recognizes that the pandemic has profoundly changed attitudes on where work can occur. As a result of this change many firms have adopted, in varying scale, hybrid work models involving personnel who are working at least part time from alternative work locations (e.g., private residences). As part of an effort to modernize its rules to reflect evolving technologies and business models, in April 2023, FINRA filed the

geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or “for cause” inspections of those offices).

¹¹ In the Remote Inspections Pilot Program Proposal, FINRA stated it will announce the effective date of the program in a Regulatory Notice (“Pilot Program Regulatory Notice”). See Remote Inspections Pilot Program Proposal, 88 FR 28620, 28635.

¹² See Securities Exchange Act Release No. 92222 (June 22, 2021), 86 FR 34069 (June 28, 2021) (SR–IEX–2021–09) (providing remote inspection relief to Members for calendar year 2021), Securities Exchange Act Release No. 96460 (December 7, 2022), 87 FR 76222 (December 13, 2022) (SR–IEX–2022–12) (providing remote inspection relief to Members for calendar year 2022), and Securities Exchange Act Release No. 96606 (January 6, 2023), 88 FR 2140 (January 12, 2023) (SR–IEX–2022–14) (providing remote inspection relief to Members for calendar year 2023).

2023) (“Remote Inspections Pilot Program Approval Order”) (SR–FINRA–2023–007).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b–4.

¹⁰ SEC staff and FINRA have stated in guidance that inspections must include a physical, on-site review component. See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) and FINRA Regulatory Notice 11–54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct onsite inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (footnote defining an OSJ omitted). See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b–4.

⁶ See IEX Rule 1.160(s).

⁷ See Securities Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620 (May 4, 2023) (“Remote Inspections Pilot Program Proposal”); Securities Exchange Act Release No. 98982 (November 17, 2023), 88 FR 82464 (November 24,

Remote Inspections Pilot Program Proposal with the Commission to establish a voluntary, three-year remote inspections pilot program that would allow eligible firms to conduct inspections of all or some offices or locations, remotely, subject to the specified terms therein.¹³

On November 17, 2023, the Commission approved the Remote Inspections Pilot Program.¹⁴ The Remote Inspections Pilot Program is designed to allow both FINRA and the firms that are planning to participate in the Remote Inspections Pilot Program additional time to develop the technology and processes that will be essential to operationalize compliance with the Remote Inspections Pilot Program's requirements. For example, firms will need to conduct an eligibility review, and conduct and document a risk assessment for each office and location that they elect to inspect remotely and implement technology to collect and report the required data and information to FINRA. Further, FINRA guidance will be needed to guide implementation in various circumstances.¹⁵ Firms that do not elect to participate or would be excluded from participating in the Remote Inspections Pilot Program will also be impacted and would need additional time to staff, schedule, and resume on-site inspections of offices or locations¹⁶ within the context of some lingering health concerns and fluid work locations.¹⁷

¹³ See *supra* note 7.

¹⁴ See *supra* note 7.

¹⁵ See *supra* note 11.

¹⁶ See *supra* note 10.

¹⁷ While the World Health Organization declared an end to COVID-19 as a public health emergency, COVID-19 remains an ongoing public health problem. See WHO Director-General, Statement on the fifteenth meeting of the IHR (2005) Emergency Committee on the COVID-19 pandemic (May 5, 2023) (stating, in part, that the "[w]hile the global risk assessment remains high, there is evidence of reducing risks to human health"), [https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-coronavirus-disease-\(covid-19\)-pandemic](https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic) (last visited January 8, 2024); see also Benjamin J. Silk, et al., COVID-19 Surveillance After Expiration of the Public Health Emergency Declaration—United States, May 11, 2023 (stating, among other things, that "[a]lthough COVID-19 no longer poses the societal emergency that it did when it first emerged in late 2019, COVID-19 remains an ongoing public health challenge. By April 26, 2023, more than 104 million U.S. COVID-19 cases, 6 million related hospitalizations, and 1.1 million COVID-19-associated deaths were reported to CDC[.]"). 72 MMWR Morb Mortal Wkly Rep, 523–528 (2023), <https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7219e1-H.pdf> (last visited January 8, 2024). Recent data on hospitalizations from the CDC indicate that the number of hospitalizations is up 20.4% in the most recent week (as of December 24 to December 30, 2023). See Centers for Disease

Control and Prevention ("CDC"), COVID Data Tracker, Data Update for the United States, <https://covid.cdc.gov/covid-data-tracker/#dataattribution-home> (last visited January 8, 2024).

In sum, as calendar year 2024 begins, the proposed extension of Supplementary Material .15 to IEX Rule 5.110 would provide firms continuity in meeting their inspection obligations and would allow FINRA time to operationalize the Remote Inspections Pilot Program. Relatedly, the proposed extension would give time for: (1) firms that are planning to participate in the Remote Inspections Pilot Program to implement the processes needed to comply with the proposed terms therein; and (2) firms that are not planning to participate or are excluded from participating in the Remote Inspections Pilot Program, to prepare to resume conducting on-site inspections of their offices and locations as part of satisfying the obligations of IEX Rule 5.110(c).

IEX is not proposing to amend the other conditions of the temporary rule. The current conditions of the supplementary material for firms that elect to conduct remote inspections would remain unchanged: such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. IEX continues to believe this temporary remote inspection option is a reasonable alternative for firms to fulfill their IEX Rule 5.110(c) obligations under the current circumstances described above. This proposed extension is designed to maintain the investor protection objectives of the inspection requirements under these circumstances. As part of those objectives, firms should consider whether, under their particular operating conditions, continued reliance on Supplementary Material .15 to IEX Rule 5.110 to conduct remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some in-person inspections would be feasible and add value to the firms' supervisory program. IEX emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done remotely under Supplementary Material .15 to IEX Rule 5.110 or in accordance with the proposed Remote Inspections Pilot Program, or on-site, would be held to the existing standards of review under Supplementary Material .12 to

Control and Prevention ("CDC"), COVID Data Tracker, Data Update for the United States, <https://covid.cdc.gov/covid-data-tracker/#dataattribution-home> (last visited January 8, 2024).

IEX Rule 5.110 (Standards for Reasonable Review).¹⁸

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange's rule proposal is intended to harmonize IEX's supervision rules, specifically with respect to the requirements for inspections of Members' branch offices and other locations, with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange. The proposed rule change would also avoid a potential lapse in the temporary relief while FINRA prepares the implementation of its recently approved Remote Inspections Pilot Program and allow firms time to adapt to the pilot program, and prepare for conducting on-site inspections, as applicable, while continuing to serve and promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue but to align the Exchange's rules with those of FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with IEX. The proposed rule change will also provide for consistent application of the Exchange's supervision rules with those of FINRA, on which they are based. Consequently, the Exchange does not believe that the proposed change implicates competition at all.

¹⁸ Those standards provide, in part, that based on the factors set forth under that supplementary material, members "may need to provide for more frequent review of certain locations."

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) ²¹ of the Act and Rule 19b-4(f)(6) ²² thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. ²³

The Exchange believes that this filing is non-controversial because it raises no novel issues and is consistent with FINRA rules previously approved by or filed with the Commission. In particular, the purpose of the proposed rule change is to harmonize with and conform to FINRA rules. The Exchange believes that the proposal promotes the protection of investors as it will harmonize the Exchange's supervision rules with those of FINRA, which will simplify the oversight process conducted by FINRA pursuant to a regulatory services agreement with the Exchange. Moreover, the Exchange does not believe that the proposed rule change implicates competition at all because the proposed change aligns the Exchange's rules with those of FINRA, which will assist it in its oversight work done pursuant to such regulatory services agreement.

A proposed rule change filed under Rule 19b-4(f)(6) ²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), ²⁵ the Commission may designate a shorter time if such action is consistent with the

protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to permit the Exchange to harmonize its rules with FINRA, as described herein, upon effectiveness of the proposed rule filing.

Since the proposed rule change would address IEX Members' ability to conduct remote inspections for any inspections to be conducted through the earlier of the effective date of the Remote Inspections Pilot Program, or June 30, 2024, waiving the 30-day operative delay would help ensure that IEX Members could plan their 2024 inspection program and conduct remote inspections under a harmonized rule set, while at the same time helping ensure that its Members continue to perform their supervisory obligations. The Exchange stated that the proposed rule change does not present any new or novel issues because IEX is harmonizing its supervision rules with those of FINRA, on which they are based. IEX further stated that the proposed rule change would provide only temporary relief during the period in which IEX harmonizes its supervision rules with FINRA. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposed rule change is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing. ²⁶

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 under Section 19(b)(2)(B) ²⁷ of the Act 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-IEX-2024-02 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-IEX-2024-02. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-IEX-2024-02 and should be submitted on or before February 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. ²⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-01202 Filed 1-22-24; 8:45 am]

BILLING CODE 8011-01-P

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78s(b)(2)(B).

²⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL CITATION OF PREVIOUS

ANNOUNCEMENT: Publishing in the FR of 1/22/24.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, January 24, 2024, at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, January 24, 2024, at 10:00 a.m. has been changed to Wednesday, January 24, 2024 at 9:15 a.m.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: January 19, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-01346 Filed 1-19-24; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99354; File No. SR-NYSEAMER-2024-03]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify Rule 980NYP

January 17, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 9, 2024, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 980NYP (Electronic Complex Order Trading) to specify additional trading interest that would result in the early end of a Complex Order Auction (“COA”). The proposed rule change is

available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 980NYP (Electronic Complex Order Trading) to specify additional trading interest that would result in the early end of a Complex Order Auction (“COA”).

Rule 980NYP reflects how Electronic Complex Orders (“ECOs”) will trade on the Exchange⁴ and paragraph (f) to this rule describes the handling of ECOs submitted to the Complex Order Auction (COA) process.⁵ When a COA Order initiates a COA, the Exchange disseminates a Request for Response (“RFR”) to solicit potentially price-improving ECO interest—which solicited interest includes interest designated to respond to the COA (*i.e.*, COA GTX Orders) and unrelated price-improving ECO interest (resting and newly arriving) that arrives during the Response Time Interval (each an “RFR Response”) (collectively, the “auction interest”).⁶ The COA lasts for the

⁴ See generally Rule 980NYP (Electronic Complex Order Trading). Unless otherwise specified, all capitalized terms used herein have the same meaning as is set forth in Rule 980NYP.

⁵ See Rules 980NYP(f) (Execution of ECOs During a COA), (f)(1) (Initiation of a COA), (f)(2) (Pricing of a COA). See also Rule 980NYP(a)(3)(A) (defining a “COA Order” as an ECO designated as eligible to initiate a COA).

⁶ See Rules 980NYP(a)(3)(B) (defining, and detailing the information included in, each RFR); (a)(3)(C) (defining each “RFR Response” as, among other things, “any ECO” received during the Response Time Interval that is in the same complex strategy as, and is marketable against, the COA Order); and (a)(3)(D) (defining the Response Time Interval as the period during which RFR Responses may be entered, which period “will not be less than 100 milliseconds and will not exceed one (1) second,” as determined by the Exchange and

duration of the Response Time Interval unless, during the COA, the Exchange receives certain options trading interest that requires the COA to conclude early.⁷ When the COA concludes, the COA Order executes first with price-improving ECO interest, next with any contra-side interest, including the leg markets (if permissible),⁸ and any remaining balance (that is not cancelled) is ranked in the Consolidated Book (the “Consolidated Book” or “Book”).⁹ Once the COA Order executes to the extent possible—whether with the best-priced Complex Orders or the best-priced interest in the leg markets—and is placed in the Book, the Exchange will update its complex order book and, if applicable, the Exchange BBO (as a result of any executions of the COA Order with the leg markets).

The Exchange proposes to modify Rule 980NYP(f)(3) to add new paragraph (E), which would provide that a COA in progress will end early any time there is a Complex Qualified Contingent Cross (“QCC”) Order submitted in the same complex strategy as the COA Order.¹⁰ By its terms, a Complex QCC Order “that is not rejected” by the Exchange, “will immediately trade in full at its price.”¹¹ To avoid rejection, a Complex

announced by Trader Update). See Rule 980NYP(b)(2)(C) (defining a “COA GTX Order,” including that such order is submitted in response to an RFR announcing a COA and will trade with the COA Order to the extent possible and then cancel).

⁷ See Rule 980NYP(f)(3)(A)–(D) (setting forth the circumstances under which a COA will conclude before the end of the Response Time Interval).

⁸ The Exchange notes that there are certain limitations to how an ECO, including a COA Order post-COA, may interact with the leg markets. See, *e.g.*, Rule 980NYP(e)(1)(A) (providing, in relevant part, that the leg markets will trade first with an ECO, but only if the legs can execute with the ECO “in full or in a permissible ratio,” and, once the leg markets trade with the ECO to the extent possible, such ECO will trade with same-priced ECOs resting in the Book). See also Rule 980NYP(e)(1)(C)–(D) (describing ECOs that are not permitted to trade with the leg markets).

⁹ See Rule 980NYP(f)(4)(A)–(C) (Allocation of COA Orders) (providing, in relevant part, that when a COA ends early or at the end of the RTI, a COA Order trades first with price-improving interest, next “with any contra-side interest, including the leg markets, unless the COA is designated as a Complex Only Order” and any remaining portion is ranked in the Consolidated Book and the COA Order is processed as an ECO pursuant to Rule 980NYP(e) (Execution of ECOs During Core Trading Hours). See Rule 900.2NY (defining Consolidated Book as “the Exchange’s electronic book of orders and quotes.”).

¹⁰ See proposed Rule 980NYP(f)(3)(E). See Rules 900.3NYP(g)(1)(A) (providing that a “Complex QCC Order” is a QCC with more than one option leg and specifying that “each option leg must have at least 1,000 contracts”) and (g)(1)(D) (setting forth the pricing requirements that a Complex QCC Order must meet, or else it will be rejected).

¹¹ See Rule 900.3NYP(g)(1)(A) (providing that a QCC Order, including a Complex QCC Order, “that is not rejected per paragraph (g)(1)(C) [Execution of

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

QCC Order must satisfy certain price validations, including that each option leg must be priced at or between the NBBO and may not be priced worse than the Exchange BBO; and, that the transaction price must be equal to or better than the best-priced Complex Orders, unless the best-priced Complex Orders contains [sic] displayed Customer interest, in which case the transaction price must improve such interest.¹² In addition, each component leg of the Complex QCC Order must trade at a price that is better than displayed Customer interest on the Consolidated Book.¹³

As noted above, until a COA concludes, the Book is not updated to reflect any COA Order executions (with price-improving auction interest or with resting ECO or leg market interest) or any balance of the COA Order ranking in the Book. Thus, to allow the later-arriving Complex QCC Order to be evaluated based on the most up-to-date Book, the Exchange proposes to end a COA upon the arrival of a Complex QCC Order in the same complex strategy. This proposed early termination would allow the Exchange to incorporate executions from the COA, or any remaining balance of the COA Order, to conduct the requisite price validations per Rule 900.3NYP(g)(1)(D) for the Complex QCC Order (*i.e.*, based on the NBBO, Exchange BBO, and best-priced Complex Orders on the Exchange following the COA Order executions and ranking).¹⁴

The proposed rule change would be consistent with current Rule 980NYP(f)(3)(A)–(D), which describes four circumstances that cause the early end of a COA to ensure that later-arriving interest does not trade ahead of a COA Order and to ensure that the Book is updated to reflect executions resulting from the COA. The Exchange believes that the proposed rule change achieves this same objective. As with the existing early end scenarios, the proposed early end of a COA does not prevent the COA Order from trading with any interest, including price-improving interest, that arrived prior to the early termination (*i.e.*, because of a

Complex QCC Order in the same complex strategy as the COA). In addition, any portion of the COA Order that does not trade in the COA is placed on the Consolidated Book where it continues to have opportunities to trade.¹⁵

The Exchange notes that at least two other options exchanges offer both Complex QCC Orders and COA functionality and each has opted for a different way to address the race condition posed by these two features. For example, per the technical specifications for complex orders executed on Cboe Exchange Inc. (“Cboe”), a Complex QCC Order is “immediately executed or canceled on entry” and is not “restricted by other auction types going on at the same time” and, as such, the price validations on the later-arriving Complex QCC are (apparently) done without consideration of the COA process and its potential impact on Cboe’s Complex Order Book.¹⁶ Alternatively, on MIAX Options Exchange (“MIAX”), a later-arriving Complex QCC Order is rejected “if, at the time of receipt” the complex strategy is subject to, among other things, “a Complex Auction pursuant to Rule 518(d).”¹⁷

The Exchange believes that its proposal to codify by rule its distinct approach to resolving the same issue faced by Cboe and MIAX would provide the best protection to its market participants. Specifically, by ending a COA upon the arrival of a Complex QCC Order in the same complex strategy, the Exchange ensures that the COA Order executes to the extent possible and that the Exchange relies on the most-up-to-

date Book (following executions in the COA) to validate the price of the Complex QCC. This proposed approach prevents the Exchange from ignoring complex orders being auctioned when conducting price validations for later-arriving Complex QCC Orders or from rejecting potentially valid Complex QCC Orders that arrive during a COA. As such, the Exchange believes that its proposal would help preserve—and maintain investor’s confidence in—the integrity of the Exchange’s local market. As such, the Exchange believes that the proposed change would benefit investors and would not place an undue burden on competition because investors are free to direct their complex order flow to other options exchanges, including Cboe or MIAX. Likewise, once this proposed rule change is effective, other options exchanges, including Cboe and MIAX, are free to copy the order handling proposed herein.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁸ in general, and furthers the objectives of Section 6(b)(5),¹⁹ in particular, because it is 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 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.

The Exchange believes that the proposed amendment to Rule 980NYP(f)(3) regarding the additional circumstance that would cause a COA to end early would promote just and equitable principles of trade because it would ensure that the COA Order is executed to the extent possible and, if applicable, is ranked in the Consolidated Book before the Exchange evaluates the later-arriving Complex QCC Order. As noted above, until the COA concludes, the Book is not updated to reflect any COA Order executions (with price-improving auction interest or with resting ECO or leg market interest) or any balance of the COA Order ranking in the Book. This proposed early termination would then allow the Exchange to incorporate executions from the COA, or any remaining balance of the COA Order, to conduct the requisite price validations

QCC Orders) or (D) [Execution of Complex QCC Orders] below will immediately trade in full at its price”).

¹² See Rule 900.3NYP(g)(1)(D)(i)–(iii).

¹³ See Rule 900.3NYP(g)(1)(D)(i).

¹⁴ The Exchange notes that, to date, there have been zero instances of a Complex QCC Order arriving during (and resulting in the early end) of a COA in the same complex strategy, pursuant to Rule 980NYP. The Exchange implemented Rule 980NYP coincident with the Exchange’s migration to its Pillar trading platform, which migration began on October 23, 2023, and was completed on October 30, 2023.

¹⁵ See *supra* note 9 (describing that any remaining portion of a COA Order following the COA will be placed on the Consolidated Book and will be processed as an ECO).

¹⁶ See Cboe, US Options Complex Book Process, Section 10, Complex Qualified Contingent Cross (Complex QCC), available here: <https://cdn.cboe.com/resources/membership/US-Options-Complex-Book-Process.pdf> (providing that, on Cboe, “Complex QCCs will not be restricted by other auction types going on at the same time in the Complex or Simple Book”). The Exchange was unable to find a codification in Cboe’s rules of this technical specification (*i.e.*, that Complex QCC Orders are executed without regard for any ongoing auctions). The Exchange notes that the complex auction process described in Cboe Rule 5.33(d) is substantially similar to the Exchange’s COA process. Compare Rule 980NYP(f) with Cboe Rule 5.33(d)(3) (describing Complex Order Auction process).

¹⁷ See MIAX Rule 516(h)(4) (describing a Complex QCC Order or “cQCC Order” and providing that such order will be rejected “if, at the time of receipt of the cQCC Order: (i) the strategy is subject to . . . a Complex Auction pursuant to Rule 518(d)”). The Exchange notes that the complex auction process described in MIAX Rule 518(d) is substantially similar to the Exchange’s COA process.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

for the Complex QCC Order (per Rule 900.3NYP(g)(1)(D)) based on the most up-to-date Book (*i.e.*, based on the NBBO, Exchange BBO, and best-priced Complex Orders on the Exchange following the COA).²⁰

As noted herein, current Rule 980NYP(f)(A)–(D) describes four circumstances under which a COA must end early to ensure that later-arriving interest does not trade ahead of a COA Order and to ensure that the Book is updated to reflect executions resulting from the COA. The Exchange believes that the proposed rule change achieves this same objective. As with the existing early end scenarios, the proposed early end of a COA does not prevent the COA Order from trading with any interest, including price-improving interest, that arrived prior to the early termination (*i.e.*, because of a Complex QCC Order in the same complex strategy as the COA). As such, the proposed change would benefit investors because it would ensure the timely executions of COA Orders (at potentially improved prices) and would also allow a timely execution of the Complex QCC Orders in the same complex strategy as the COA Order. In addition, the proposal would ensure that the prices used to validate a Complex QCC Order would incorporate executions from the COA, or any remaining balance of the COA Order.²¹

At least two other options exchanges have taken different approaches to address how to handle the arrival of a Complex QCC Order while a Complex Order Auction is in progress. As noted herein, the Exchange believes that its proposed approach would provide the best protection to investors because ending a COA upon receipt of a Complex QCC Order would ensure that the COA Order executes to the extent possible and that the Exchange relies on the most-up-to-date Book (following executions in the COA) to validate the price of the Complex QCC Order. Thus, the Exchange believes the proposed rule change would promote just and equitable principles of trade because it would help preserve—and maintain investor's confidence in—the integrity of the Exchange's local market.

Finally, the Exchange believes that modifying the rule as proposed would add clarity and transparency to Rule

980NYP regarding the handling of COA Orders.

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 intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would apply in the same manner to all similarly-situated market participants that opt to utilize the COA process, the use of which is voluntary and, as such, market participants are not required to avail themselves of this process.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is designed to ensure that both a COA Order and a Complex QCC Order receive timely executions based on current market conditions. To the extent that other options exchanges, like Cboe or MIAX, offer complex order auctions and Complex QCC Orders, such exchanges are free to adopt (if they have not already done so) the early termination provision proposed herein.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²² and Rule 19b–4(f)(6) thereunder.²³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.²⁴

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b–4(f)(6).

²⁴ In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of

A proposed rule change filed under Rule 19b–4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁷ of the Act 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–NYSEAMER–2024–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.
- All submissions should refer to file number SR–NYSEAMER–2024–03. 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

the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁵ 17 CFR 240.19b–4(f)(6).

²⁶ 17 CFR 240.19b–4(f)(6)(iii).

²⁷ 15 U.S.C. 78s(b)(2)(B).

²⁰ See *supra* note 14 (noting that, to date, there have been zero instances of a Complex QCC Order arriving during (and resulting in the early end) of a COA in the same complex strategy, pursuant to Rule 980NYP).

²¹ As noted herein, any portion of the COA Order that does not trade in the COA is placed in the Consolidated Book where it continues to have opportunities to trade. See, *e.g.*, *supra* note 9.

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-NYSEAMER-2024-03 and should be submitted on or before February 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-01188 Filed 1-22-24; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice 12302]

30-Day Notice of Proposed Information Collection: PEPFAR Program Expenditures

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to February 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:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Irum Zaidi, 1800 G St. NW, Suite 10300, SA-22, Washington, DC 20006, who may be reached on 202-663-2588 or at ZaidiIF@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* PEPFAR Program Expenditures.
 - *OMB Control Number:* 1405-0208.
 - *Type of Request:* Extension of a Currently Approved Collection.
 - *Originating Office:* Bureau of Global Health Security and Diplomacy.
 - *Form Number:* DS-4213.
 - *Respondents:* Recipients of U.S. government funds appropriated to carry out the President's Emergency Plan for AIDS Relief (PEPFAR).
 - *Estimated Number of Respondents:* 3,480.
 - *Estimated Number of Responses:* 3,480.
 - *Average Time per Response:* 20 hours per response.
 - *Total Estimated Burden Time:* 68,750 hours.
 - *Frequency:* Annually.
 - *Obligation to Respond:* Mandatory.
- We are soliciting public comments to permit the Department to:
- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
 - Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
 - Enhance the quality, utility, and clarity of the information to be collected.
 - Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The U.S. President's Emergency Plan for AIDS Relief (PEPFAR) was established through enactment of the

United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act (Pub. L. 108-25), as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act (Pub. L. 110-293) (HIV/AIDS Leadership Act), as amended by the PEPFAR Stewardship and Oversight Act (Pub. L. 113-56), and as amended and reauthorized for a third time by the PEPFAR Extension Act (Pub. L. 115-305) to support the global response to HIV/AIDS. In order to improve program monitoring, PEPFAR added reporting of expenditures by program area to the current routine reporting of program results for the annual report. Data are collected from implementing partners in countries with PEPFAR programs using a standard tool (DS-4213) via an electronic web-based interface into which users upload data. These expenditures are analyzed by partner for all PEPFAR program areas. These analyses then feed into partner and program reviews at the country level for monitoring and evaluation on an ongoing basis. Summaries of these data provide key information about program costs under PEPFAR on a global level. Applying expenditure results will improve strategic budgeting, identification of efficient means of delivering services, and accuracy in defining program targets; and will inform allocation of resources to ensure the program is accountable and using public funds for maximum impact.

Methodology

Data will continue to be collected in a web-based interface available to all partners receiving funds under PEPFAR. Implementing partners (IPs) prefer the Microsoft Excel template based data collection process. The requirements in the Excel template have been reduced with IP input to only request critical information. By being able to download a template, prime IPs responsible to complete the submission are more effectively able to collaborate quickly with other key personnel and coordinate with their subrecipients to enter the data for the full amount of PEPFAR funding expended during the prior fiscal year. This approach also proves helpful where internet connectivity is not strong. After completing the Excel template, IPs upload the data to an automated system that further checks the data entered for quality and completeness. Automated checks reduce the time needed by IPs to complete the data cleaning process. Aggregate data is

²⁸ 17 CFR 200.30-3(a)(12), (59).

available in a central system for analysis.

Brendan Garvin,

Director of Management and Budget, Bureau of Global Health Diplomacy and Security, Department of State.

[FR Doc. 2024-01151 Filed 1-22-24; 8:45 am]

BILLING CODE 4710-10-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2024-0001]

Establishment of an Emergency Relief Docket for Calendar Year 2024

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of establishment of public docket.

SUMMARY: This Notice announces the establishment of FRA's emergency relief docket (ERD) for calendar year 2024. The designated ERD for calendar year 2024 is docket number FRA-2024-0001.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for further information regarding submitting petitions and/or comments to docket number FRA-2024-0001.

SUPPLEMENTARY INFORMATION: On May 19, 2009, FRA published a direct final rule establishing ERDs and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 74 FR 23329. That direct final rule became effective on July 20, 2009, and made minor modifications to 49 CFR 211.45 in FRA's Rules of Practice in 49 CFR part 211. Section 211.45(b) provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system (available at www.regulations.gov). Section 211.45(b) further provides that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. FRA established the ERD and emergency waiver procedures to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. This Notice announces the designated ERD for calendar year 2024 is docket number FRA-2024-0001.

As detailed in § 211.45, if the FRA Administrator determines an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety would benefit from

providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. In such an event, the FRA Administrator will issue a statement in the ERD indicating the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its website at railroads.dot.gov. Any party desiring relief from FRA regulatory requirements as a result of the emergency should submit a petition for emergency waiver under 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers under 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are at 49 CFR 211.45(h).

Privacy

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024-01209 Filed 1-22-24; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2018-0072]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on December 14, 2023, North County Transit District (NCTD) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of

Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). The relevant Docket Number is FRA-2018-0072.

Specifically, NCTD requests relief required to continue participation in FRA's Confidential Close Call Reporting System (C³RS) Program. NCTD seeks to continue shielding reporting employees from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)-(4); 240.305(a)(1)-(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)-(4), (e)(6)-(11), (f)(1)-(2); and 242.407. The C³RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C³RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at www.regulations.gov. Follow the online instructions for submitting comments.

Communications received by March 25, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/>

privacy-notice for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2024-01213 Filed 1-22-24; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice To Renew the Transit Advisory Committee for Safety Charter

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of renewal of the charter for the Transit Advisory Committee for Safety.

SUMMARY: The Federal Transit Administration (FTA) announces the renewal of the Transit Advisory Committee for Safety (TRACS) charter. The current TRACS charter expires on February 2, 2024. The U.S. Department of Transportation and FTA are committed to ensuring the safety of the Nation's public transportation systems and reducing the safety risk to both riders and transit workers. The Secretary of Transportation (Secretary) has determined that renewing TRACS is necessary and in the public interest.

DATES: This charter will be effective for two years from the date it is filed with Congress and uploaded into the General Services Administration Federal Advisory Committee Act (FACA) Database.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, TRACS Designated Federal Officer and FTA Associate Administrator for Transit Safety and Oversight, (202) 366-1783, *Joseph.DeLorenzo@dot.gov*; or Bridget Zamperini, TRACS Program Manager, FTA Office of Transit Safety and Oversight, *TRACS@dot.gov*.

SUPPLEMENTARY INFORMATION: This notice announces the Secretary's renewal of TRACS as a Federal Advisory Committee in accordance with FACA (Pub. L. 92-463, 5 U.S.C. ch. 10) to provide information, advice, and recommendations to the Secretary and the FTA Administrator on matters relating to the safety of public transportation systems. TRACS continues its task of providing advice and recommendations on improvements and innovations in transit safety. TRACS reviews current challenges and innovations in public transportation and provides recommendations that FTA

can implement in support of safety in the public transportation sector.

This notice is provided in accordance with the Federal Advisory Committee Act. Please see the TRACS website for additional information at <https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs>.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2024-01274 Filed 1-22-24; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of a person and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person and vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley T. Smith, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

On January 18, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is blocked under the relevant sanctions authority listed below.

Entity

1. HENNESEA HOLDINGS LIMITED, 1229, Al Sila Tower, Adgm Square, Al Maryah Island, Abu Dhabi, United Arab Emirates; Organization Established Date 2022; License 000008900 (United Arab Emirates); Economic Register Number (CBLS) 11978506 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) for operating or having operated in the marine sector of the Russian Federation economy.

On January 18, 2024, OFAC also identified the following vessels as property in which a blocked person has an interest, under the relevant sanctions authority listed below:

Vessels

1. ARISTO (5LJI7) Chemical/Products Tanker Liberia flag; Vessel Registration Identification IMO 9327413; MMSI 636022549 (vessel) [RUSSIA-EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

2. HAI II (D5HH9) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9259599; MMSI 636016693 (vessel) [RUSSIA-EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

3. HS ARGE (5LIK5) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9299745; MMSI 636022360 (vessel) [RUSSIA-EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

4. HS ATLANTICA (5LIP5) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9322839; MMSI 636022401 (vessel) [RUSSIA-EO14024] (Linked To: HS ATLANTICA LIMITED; Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person

whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

5. HS BURAQ (5LIK9) Products Tanker Liberia flag; Vessel Registration Identification IMO 9381732; MMSI 636022364 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

6. HS ESBERG (5LIN6) Products Tanker Liberia flag; Vessel Registration Identification IMO 9410894; MMSI 636022386 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

7. HS EVERETT (5LIP7) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9410870; MMSI 636022403 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

8. HS GLORY (D5OH4) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9249087; MMSI 636018127 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

9. HS LEGEND (5LIK7) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9381744; MMSI 636022362 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

10. HS STAR (D5RV6) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9274446; MMSI 636018885 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

11. LA PRIDE (5LHW6) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9274616; MMSI 636022251 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

12. MONA (5LIS6) Chemical/Oil Tanker Liberia flag; Vessel Registration Identification IMO 9314818; MMSI 636022424 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

13. NELLIS (5LJI8) Chemical/Oil Tanker Liberia flag; Vessel Registration Identification IMO 9322267; MMSI 636022550 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

14. OSPEROUS (5LHE4) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9412995; MMSI 636022098 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

15. PERIA (5LIZ6) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9322827; MMSI 636022479 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

16. SARA II (5LJI4) Chemical/Oil Tanker Liberia flag; Vessel Registration Identification IMO 9301615; MMSI 636022546 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

17. SENSUS (5LHJ7) Products Tanker Liberia flag; Vessel Registration Identification IMO 9296585; MMSI 636022146 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person

whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

18. UZE (5LHB3) Chemical/Oil Tanker Liberia flag; Vessel Registration Identification IMO 9323338; MMSI 636022072 (vessel) [RUSSIA–EO14024] (Linked To: HENNESEA HOLDINGS LIMITED).

Identified as property in which Hennessea Holdings Limited, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

Dated: January 18, 2024.

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2024–01245 Filed 1–22–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing the names of one or more entities whose property and interests in property have been unblocked and who have been removed from the SDN List.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

A. On January 17, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Individual

1. PIMENTEL MATA, Alberto; (a.k.a. PIMENTEL, Alberto), Guatemala; DOB 26 Oct 1981; POB San Jose, Costa Rica; nationality Guatemala; Gender Male; Passport 238670724 (Guatemala) expires 14 Jan 2024; National ID No. 2386707240101 (Guatemala) (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order (E.O.) 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," 82 FR 60839 (Dec. 26, 2017) for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

B. On January 17, 2024, OFAC determined that the following entities would be removed from the SDN List and that their property and interests in property subject to U.S. jurisdiction are unblocked pursuant to E.O. 13818. These entities are no longer subject to the blocking provisions of Section 1(a) of E.O. 13818.

Entities

1. COMPANIA GUATEMALTECA DE NIQUEL, SOCIEDAD ANONIMA (a.k.a. COMPANIA GUATEMALTECA DE NIQUEL; a.k.a. GUATEMALAN NICKEL COMPANY; a.k.a. "CGN"), 9-55 Avenida Reforma Z.10, Guatemala City, Guatemala; Organization Established Date 22 Jun 1960; NIT # 335886 (Guatemala) [GLOMAG].

2. COMPANIA PROCESADORA DE NIQUEL DE IZABAL, S.A. (a.k.a. COMPANIA PROCESADORA DE NIQUEL; a.k.a. COMPANIA PROCESADORA DE NIQUEL DE IZABAL, SOCIEDAD ANONIMA; a.k.a. "PRONICO"), 9-55 Avenida Reforma Z.10, Guatemala City, Guatemala; Organization Established Date 03 Sep 2013; NIT # 83557008 (Guatemala) [GLOMAG].

3. MAYANIQUEL, SOCIEDAD ANONIMA, 12 Calle 2-25 Z.10,

Guatemala City, Guatemala; Organization Established Date 03 Oct 1996; NIT # 8252149 (Guatemala) [GLOMAG].

Dated: January 17, 2024.

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2024-01246 Filed 1-22-24; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS**Solicitation of Nominations for Appointment to the Advisory Committee on Minority Veterans**

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Center for Minority Veterans (CMV), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Veterans ("the Committee").

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EST on June 15, 2024.

ADDRESSES: All nomination packages should be emailed to vacocmv@va.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Dwayne Campbell and Mr. Ronald Sagudan, Center for Minority Veterans, Department of Veterans Affairs, 810 Vermont Ave., NW (00M), Washington, DC 20420, Telephone (202) 461-6191. A copy of the Committee charter and list of the current membership can be obtained by contacting Mr. Campbell or Mr. Sagudan or by accessing the website managed by CMV at <https://www.va.gov/centerforminorityveterans/acmv/index.asp>.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee responsibilities include, but not limited to: (1) Advising the Secretary and Congress on VA's administration of benefits and provisions of healthcare, benefits, and services to minority Veterans.

(2) Providing a biennial report to Congress outlining recommendations, concerns and observations on VA's delivery of services to minority Veterans.

(3) Meeting with VA officials, Veteran Service Organizations, and other stakeholders to assess the Department's efforts in providing benefits and outreach to minority Veterans.

(4) Making periodic site visits and holding town hall meetings with Veterans to address their concerns.

Management and support services for the Committee are provided by the CMV.

Authority: The Committee was established in accordance with 38 U.S.C. 544. In accordance with 38 U.S.C. 544, the Committee advises the Secretary on the administration of VA benefits and services to minority Veterans; assesses the needs of minority Veterans with respect to such benefits; and evaluates whether VA compensation, medical and rehabilitation services, outreach and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee.

Membership Criteria

CMV is requesting nominations for upcoming vacancies on the Committee. The Committee is currently composed of 12 members, in addition to ex-officio members. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including:

(1) Representatives of Veterans who are minority group members;

(2) Individuals who are recognized authorities in fields pertinent to the needs of Veterans who are minority group members;

(3) Veterans who are minority group members and who have experience in a military theater of operations;

(4) Veterans who are minority group members and who do not have such experience; and

(5) Women Veterans who are minority group members recently separated from active military service.

Section 544 defines "minority group member" as an individual who is Asian American, Black, Hispanic, Native American (including American Indian, Alaska Native and Native Hawaiian), or Pacific-Islander American.

In accordance with section 544, the Secretary determines the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of service of any member shall not exceed three years. The Secretary may reappoint any member for additional terms of service.

Professional Qualifications: In addition to the criteria above, VA seeks—

(1) Diversity in professional and personal qualifications;

(2) Experience in military service and military deployments (please identify your Branch of Service and Rank);

- (3) Current work with Veterans;
- (4) Committee subject matter expertise;
- (5) Emphasis on experience using VA Service and Benefits.

Requirements for Nomination Submission

Nominations should be type written (one nomination per nominator). Nomination package should include: (1) a letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone numbers, and email address; (3) the nominee's curriculum vitae or resume, and (4) a summary of the nominee's experience and qualification relative to the professional qualifications criteria listed above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of its Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, males & females, racial and ethnic minority groups, and veterans with disabilities are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: January 17, 2024.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2024-01204 Filed 1-22-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Research Advisory Committee on Gulf War Veterans' Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Notice of nominations for appointment to the Research Advisory Committee on Gulf War Veterans' Illnesses.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment to the Research Advisory Committee on Gulf War Veterans' Illnesses (RACGWVI) (hereinafter in this section referred to as "the Committee").

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on March 1, 2024.

ADDRESSES: All nominations should be emailed to varacgwvi@va.gov. Please write Nomination for RACGWVI Membership in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Block, Designated Federal Officer, Gulf War Research Program, VA Office of Research and Development at Karen.Block@va.gov. A copy of the Committee charter and list of the current membership can be found at Research Advisory Committee on Gulf War Veterans' Illnesses website (<https://www.va.gov/RAC-GWVI/>) or by contacting Dr. Block on (202) 280-3632.

SUPPLEMENTARY INFORMATION: The Research Advisory Committee on Gulf War Veterans' Illnesses was established to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, plans and strategies related to understanding and treating the health consequences of military service in the Southwest Asia theater of operations during the 1990-91 Gulf War (Operations Desert Shield and Desert Storm).

Membership Criteria and Qualifications: VA is requesting nominations for upcoming vacancies on the Committee and is committed to diversity, equity and inclusion. The committee is comprised of Government employees and non-Federal employees. Non-Federal employees are appointed by the Secretary from the general public and will serve as Special Government employees.

The expertise required of Committee membership includes, but is not limited to:

- a. 1990-91 Gulf War Veterans and/or representatives of such Veterans;

- b. Veterans of all eras;
- c. Community leaders, professionals and other concerned stakeholders;
- d. Members of the medical and scientific communities representing disciplines such as epidemiology, genetics, immunology, neurology, toxicology, dentistry, environmental health and justice, occupational and industrial hygiene; and
- e. Experts in advanced medical and scientific technologies including artificial intelligence.

Membership Requirements: The Committee meets at least twice annually, and some members may have an opportunity to participate in additional subcommittee meetings. Individuals selected for appointment to the Committee shall be invited to serve a two to three- year term. The Secretary may reappoint Committee members for an additional term of service. Committee members will receive per diem and reimbursement for eligible travel expenses incurred. Self-nominations and nominations of non-Veterans will be accepted. Any letters of nomination from organizations or other individuals should accompany the package when it is submitted.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience information so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission: Nominations must be typed (12 point font) and include:

- (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating that he/she is a U.S. citizen and is willing to serve as a member of the Committee;
- (2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;
- (3) The nominee's resume or curriculum vitae that is no more than three pages in length. The resume should show professional work experience, and Veterans service involvement, especially service that involves 1990-91 Gulf War Veterans' issues; and
- (4) A one-page cover letter. The cover letter must summarize:
 - a. the nominee's interest in serving on the committee and contributions he/she can make to the work of the committee;

b. any relevant Veterans service activities he/she is currently engaged in;

c. the military branch affiliations and timeframe of military service (if applicable);

d. information about the nominee's personal and professional qualifications and background that would give her/him a diverse perspective on Gulf War Veterans' matters; and

e. a statement confirming that he/she is not a Federally-registered lobbyist.

The Department makes every effort to ensure that the membership of VA

Federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall promote diversity, equity and inclusion and will be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears

to have no conflict of interest that would preclude membership.

Authorization: The Committee is authorized by Pub. L. 105–368 104, and operates under the Federal Advisory Committee Act, 5 U.S.C. ch. 10.

Dated: January 16, 2024.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–01065 Filed 1–22–24; 8:45 am]

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Part II

Department of Commerce

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50 Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Coastal Virginia Offshore Wind Commercial Project Offshore of Virginia; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 240104–0001]

RIN 0648–BL74

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Coastal Virginia Offshore Wind Commercial Project Offshore of Virginia

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, NMFS hereby promulgates regulations to govern the incidental taking of marine mammals incidental to the Virginia Electric and Power Company, doing business as Dominion Energy Virginia (Dominion Energy), construction of the Coastal Virginia Offshore Wind Commercial (CVOW–C) Project (hereafter, the CVOW–C Project or the Project) in Federal and State waters offshore of Virginia, 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 0483 (Lease Area) and along export cable routes to sea-to-shore transition points (collectively referred to as the “Project Area”), over the course of 5 years (February 5, 2024 through February 4, 2029). These regulations, which allow for the issuance of a Letter of Authorization (LOA) for the incidental take of marine mammals during construction-related activities within the Project Area during the effective dates of the regulations, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: This rulemaking is effective from February 5, 2024, through February 4, 2029.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Availability**

A copy of Dominion Energy’s Incidental Take Authorization (ITA) application, supporting documents, received public comments, and the proposed rulemaking, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This final rule, as promulgated, provides a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) for NMFS to authorize the take of marine mammals incidental to construction of the Project within the Project Area. NMFS received a request from Dominion Energy to incidentally take 21 species of marine mammals, comprising 22 stocks (7 stocks by Level A harassment and Level B harassment and 15 stocks by Level B harassment only), incidental to Dominion Energy’s 5 years of construction activities. No mortality or serious injury is anticipated or authorized in this final rulemaking. Please see the *Legal Authority for the Final Action* section below for definitions of harassment, serious injury, and incidental take.

Legal Authority for the Final Action

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking (e.g., “other means of effecting the least practicable adverse impact” on the affected species or

stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as “mitigation”)) and requirements pertaining to the monitoring and reporting of such takings.

As noted above, no serious injury or mortality is anticipated or authorized in this final rule. Relevant definitions of MMPA statutory and regulatory terms are included below:

- *U.S. Citizens*—individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) (50 CFR 216.103);
- *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13); 50 CFR 216.3);
- *Incidental harassment, incidental taking, and incidental, but not intentional, taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable, or accidental (see 50 CFR 216.103);
- *Serious Injury*—any injury that will likely result in mortality (50 CFR 216.3);
- *Level A harassment*—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3); and
- *Level B harassment*—any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362(18); 50 CFR 216.3).

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for proposing and, if appropriate, issuing regulations and an associated LOA(s). This final rule establishes permissible methods of taking and mitigation, monitoring, and reporting requirements for Dominion Energy’s construction activities.

Summary of Major Provisions Within the Final Rule

The major provisions of this final rule are:

- The authorized take of marine mammals by Level A harassment and/or Level B harassment;
- No authorized take of marine mammals by mortality or serious injury;

- The establishment of a seasonal moratorium on pile driving of foundation piles during the months of the highest presence of North Atlantic right whales (*Eubalaena glacialis*) in the Lease Area (November 1st through April 30th, annually);

- A requirement for both visual and passive acoustic monitoring to occur by NOAA Fisheries-approved Protected Species Observers (PSOs) and Passive Acoustic Monitoring (PAM) operators (where required) before, during, and after select activities;

- A requirement of training for all Dominion Energy personnel to ensure marine mammal protocols and procedures are understood;
- The establishment of clearance and shutdown zones for all in-water construction activities to prevent or reduce the risk of Level A harassment and to minimize the risk of Level B harassment;

- A requirement to use sound attenuation devices during all foundation pile driving installation activities to reduce noise levels to those modeled assuming 10 decibels (dB);

- A delay to the start of foundation installation if a North Atlantic right whale is observed at any distance by PSOs or acoustically detected within the PAM Monitoring Zone (10 kilometer (km));

- A delay to the start of foundation installation if other marine mammals are observed entering or within their respective clearance zones;

- A requirement to shut down pile driving (if feasible) if a North Atlantic right whale is observed at any distance or if any other marine mammals are observed entering their respective shutdown zones;

- A requirement to conduct sound field verification (SFV) during foundation pile driving to measure *in-situ* noise levels for comparison against the modeled results;

- A requirement to implement soft-starts during impact pile driving using the least amount of hammer energy necessary for installation;

- A requirement to implement ramp-up during the use of high-resolution geophysical (HRG) marine site characterization survey equipment;

- A requirement to monitor relevant Right Whale Sightings Advisory System and Channel 16, as well as reporting any sightings to the sighting network;

- A requirement to implement various vessel strike avoidance measures;

- A requirement to implement measures during fisheries monitoring surveys, such as removing gear from the water if marine mammals are

considered at-risk or are interacting with gear; and

- A requirement to submit frequently scheduled and situational reports including, but not limited to, information regarding activities occurring, marine mammal observations and acoustic detections, and sound field verification monitoring results.

NMFS must withdraw or suspend any LOA issued under these regulations, after notice and opportunity for public comment, if it finds the methods of taking or the mitigation, monitoring, or reporting measures are not being substantially complied with (16 U.S.C. 1371(a)(5)(B); 50 CFR 216.206(e)). Additionally, failure to comply with the requirements of the LOA may result in civil monetary penalties and knowing violations may result in criminal penalties (16 U.S.C. 1375; 50 CFR 216.206(g)).

Fixing America's Surface Transportation Act (FAST-41)

This project is covered under Title 41 of the Fixing America's Surface Transportation Act or "FAST-41." FAST-41 includes a suite of provisions designed to expedite the environmental review for covered infrastructure projects, including enhanced interagency coordination as well as milestone tracking on the public-facing Permitting Dashboard. FAST-41 also places a 2-year limitations period on any judicial claim that challenges the validity of a Federal agency decision to issue or deny an authorization for a FAST-41 covered project (42 U.S.C. 4370m-6(a)(1)(A)).

Dominion Energy's project is listed on the Permitting Dashboard, where milestones and schedules related to the environmental review and permitting for the Project can be found at <https://www.permits.performance.gov/permitting-project/fast-41-covered-projects/coastal-virginia-offshore-wind-commercial-project>.

Summary of Request

On February 16, 2022, Dominion Energy submitted a request for the promulgation of regulations and issuance of an associated LOA to take marine mammals incidental to construction activities associated with the Project. The request was for the incidental, but not intentional, taking of a small number of 21 marine mammal species (comprising 22 stocks) by Level B harassment (all 22 stocks) and by Level A harassment (7 species or stocks). Dominion Energy did not request, and NMFS neither expects nor authorizes, incidental take by serious injury or mortality.

In response to our questions and comments and following extensive information exchange between Dominion Energy and NMFS, Dominion Energy submitted a final revised application on August 5, 2022. NMFS deemed it adequate and complete on August 12, 2022. This final application is available on NMFS' website at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

On September 15, 2022, NMFS published a notice of receipt (NOR) of Dominion Energy's adequate and complete application in the **Federal Register** (87 FR 56634), requesting public comments and information on Dominion Energy's request during a 30-day public comment period. During the NOR public comment period, NMFS received a single comment letter from an environmental non-governmental organization: the Southern Environmental Law Center (SELC). We also received a single comment from a government agency: the United States Geological Survey. These comments entailed broader comments very similar to those we received during the proposed notice's comment period, including, but not limited to: vessel strike avoidance measures; the use of best available science when evaluating a seasonal pile driving moratorium; suggestions on proposed clearance and shutdown (termed "exclusion") zones for North Atlantic right whales; cumulative impacts; and additional suggested mitigation, monitoring, and reporting measures in a supplemental attachment provided by the commenter. In June 2022, Duke University's Marine Spatial Ecology Laboratory released updated habitat-based marine mammal density models (Roberts *et al.*, 2023). Because Dominion Energy applied marine mammal densities to their analysis in their application, Dominion Energy submitted a final Updated Density and Take Estimation Memo (herein referred to as Updated Density and Take Estimation Memo) on January 10, 2023 that included marine mammal densities and take estimates based on these new models which NMFS posted on our website in May 2023.

In January 2023, BOEM informed NMFS that the proposed activity had changed from what is presented in the adequate and complete MMPA application. Specifically, the changed proposed activity involved the reduction of maximum wind turbine generators (WTGs) built (from 205 to 202 WTGs) as under the original Project Design Envelope (PDE) and the offshore substations (OSSs) would be located in the vessel transit routes. Under the 202

build-out, three WTGs would be removed and the three OSSs would be shifted into these WTG positions. However, in late January 2023, Dominion Energy confirmed that their Preferred Layout of 176 WTGs is the base case for construction, but that they could possibly need up to 7 WTGs re-piled in alternate positions due to unstable sediment conditions, which could necessitate up to 183 independent piling events. WTG positions have been removed from consideration for one or more of the following reasons: impracticable due to foundation technical design risk, shallow gas presence, commercial shipping and navigation risk concerns, erosion risk, and presence of a designated fish haven. Based on the information provided, NMFS carried forward the analysis assuming a total build-out of 176 WTGs plus seven re-piled WTGs (a total of 183 independent piling events for WTGs) and the 3 originally planned OSSs. Due to the significant reduction of turbines from the original proposed action found in the adequate and complete ITA application (reduction of approximately 14 percent), Dominion Energy, in consultation with NMFS, provided an updated proposed action summary, revised exposure estimates, revised take requests, and an updated piling schedule in mid-February 2023 (hereinafter referred to as the Revised Proposed Action Memo). NMFS posted this to our website in May 2023.

On May 4, 2023, NMFS published a proposed rule in the **Federal Register** for the CVOW-C Project (88 FR 28656). In the proposed rule, NMFS synthesized all of the information provided by Dominion Energy, all best available scientific information and literature relevant to the proposed project, outlined, in detail, proposed mitigation designed to effect the least practicable adverse impacts on marine mammal species and stocks as well as proposed monitoring and reporting measures, and made preliminary negligible impact and small numbers determinations. The public comment period on the proposed rule was open for 30 days on <https://www.regulations.gov> starting on May 4, 2023 and closed after June 5, 2023. The public comments can be viewed at <https://www.regulations.gov/docket/NOAA-NMFS-2023-0030>; a summary of public comments received during this 30-day period and NMFS responses are described in the Comments and Responses section.

NMFS has previously issued six Incidental Harassment Authorizations (IHAs) to Dominion Energy. Two of those IHAs, issued in 2018 (83 FR 39062, August 8, 2018) and 2020 (85 FR

30930, May 21, 2020) supported the development of the Coastal Virginia Offshore Wind project, known as the CVOW Pilot Project (wherein two turbines were constructed). The remaining four IHAs (two of which were modified IHAs) were high resolution site characterization surveys within and around the CVOW-C Lease Area (see 85 FR 55415, September 8, 2020; 85 FR 81879, December 17, 2020; 86 FR 21298, April 22, 2021; and 87 FR 33730, June 3, 2022). To date, Dominion Energy has complied with all the requirements (e.g., mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Estimated Take section. These monitoring reports can be found on NMFS' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations (87 FR 46921, August 1, 2022) to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (UME). Should a final vessel speed rule be issued and become effective during the effective period of these regulations (or any other MMPA incidental take authorization), the authorization holder will be required to comply with any and all applicable requirements contained within the final vessel speed rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders will be required to comply with the requirements of the vessel speed rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization will remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule will become effective immediately upon the effective date of any final vessel speed rule, and when notice is published on the effective date, NMFS will also notify Dominion Energy if the measures in the vessel speed rule were to supersede any of the measures in the MMPA authorization.

Description of the Specified Activities

Overview

Dominion Energy plans to construct and operate the Project, a 2,500 to 3,000-megawatt (MW) offshore wind farm, in the Project Area. The Project will allow the Commonwealth of Virginia to meet its renewable energy goals under the Virginia Clean Economy Act (HB 1526/SB 851).

Dominion Energy's precursor pilot project (i.e., CVOW Pilot Project) was a 12 MW, two-turbine test project and the first to be installed in Federal waters. Designed as a research/test project, the two turbines associated with the CVOW Pilot Project became operational in October 2020 approximately 27 miles (mi; 43.45 kilometers (km)) off of Virginia Beach, Virginia. Information on this Pilot Project was used to inform the CVOW-C project. More information on the Pilot Project can be found on BOEM's website (<https://www.boem.gov/renewable-energy/state-activities/coastal-virginia-offshore-wind-project-cvow>) and in the IHA authorized by NMFS in May 2020 for BOEM Lease Area OCS-A-0497 (<https://www.bfisheries.noaa.gov/action/incidental-take-authorization-dominion-energy-virginia-offshore-wind-construction-activities>).

The Project will consist of several different types of permanent offshore infrastructure, including 176 WTGs (e.g., the Siemens Gamesa SG-14-222 DD 14-MW model with power boost technology potentially allowing up to 14.7-MW, equating to a total of 2,587.2-MW for full build-out) and associated foundations, three OSSs, offshore substation array cables, offshore export cables, and substation interconnector cables. Overall, Dominion Energy will conduct the following specified activities: install 176 WTGs and 3 OSS on monopile foundations via vibratory and impact pile driving; install and subsequently remove up to 9 cofferdams, by vibratory pile driving, and install up to 108 goal posts (12 goal posts for each of 9 Direct Pipe locations), by impact pile driving, to assist in the installation of the export cable; conduct several types of fishery and ecological monitoring surveys; place scour protection; trenching, laying, and burial activities associated with the installation of the export cable from OSSs to shore-based converter stations and inter-array cables between turbines; conduct HRG vessel-based site characterization surveys using active acoustic sources with frequencies of less than 180 kilohertz (kHz); transit within the Project Area and between ports and the Lease Area to transport crew,

supplies, and materials to support construction activities; and WTG operation. From the sea-to-shore transition point, onshore underground export cables are then connected in series to switching stations/substations, overhead transmission lines, and ultimately to the grid connection, which will be located in a parking lot found west of the firing range at the State Military Reservation located in Virginia Beach, Virginia.

Marine mammals exposed to elevated noise levels during vibratory and impact pile driving and site characterization

surveys may be taken by Level A harassment and/or Level B harassment, depending on the specified activity and species.

A detailed description of the specified activities is provided in the proposed rule as published in the **Federal Register** (88 FR 28656, May 4, 2023). Since the proposed rule was published, Dominion Energy has not modified the specified activities. Please refer to the proposed rule for more information on the description of the specified activities.

Dates and Duration

Dominion Energy anticipates its specified activities to occur throughout all 5 years of the effective period of the regulations, beginning on February 5, 2024 and continuing through February 4, 2029. Dominion Energy's anticipated construction schedule can be found in Table 1. Dominion Energy has noted that these are the best, and conservative, estimates for activity durations but that the schedule may shift due to weather, mechanical, or other related delays.

TABLE 1—CONSTRUCTION SCHEDULE ^a

Project activity	Expected timing	Expected duration (approximate)
Scour Protection Pre-Installation	Q2 through Q4 of 2024	9 months.
WTG Foundation Installation ^b	Q2 through Q4 of 2025	9 months.
WTG Foundation Installation ^b	Q2 through Q4 of 2024	6 months.
WTG Foundation Installation ^b	Q2 through Q4 of 2025	6 months.
Scour Protection Post-installation	Q2 through Q4 of 2024	9 months.
Scour Protection Post-installation	Q2 through Q4 of 2025	9 months.
OSS Foundation Installation ^b	Q2 through Q4 of 2024	6 months.
OSS Foundation Installation ^b	Q2 through Q4 of 2025	6 months.
Cable Landfall Construction (Goal Posts and Cofferdams) ^h	Q1 through Q4 of 2024	6 months.
HRG Surveys ^{c,d}	Q1 2024 through Q4 2028	Any time of year.
Site Preparation	Q1 2024 through Q2 2024	6 months.
Inter-array Cable Installation	Q2 2025 through Q4 2026	19 months.
Export Cable Installation	Q3 2024 through Q3 2025	14 months.
Fishery Monitoring Surveys: ^{f,g}		
Surf Clam	Q2 2023	1 week.
Whelk	Q2 2023 through Q1 2025	24 months.
Black Sea Bass	Q2 2023 through Q1 2025	24 months.

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.

^a While the effective period of the final regulations would extend a few months into 2029, no activities are planned to occur in 2029 by Dominion Energy, so these were not included in this table.

^b Activities would only occur from May 1st through October 31st annually.

^c Activities would begin in February 2024, upon the issuance of an associated LOA, and continue through construction and post-construction.

^d For HRG surveys, Dominion Energy anticipates up to 65 days of surveys would occur during the pre-construction period (2024), up to 307 days during the primary construction years (2025 and 2026), and up to 736 days would be needed during the post-construction years (2027 and 2028) with a 50/50 split of 368 days each year. No surveys are planned for 2029.

^e Dominion Energy anticipates that all WTGs and OSS foundations will be installed by October 31, 2025; however, unanticipated delays may require some foundation pile driving to occur in 2026 and/or 2027.

^f Some fishery monitoring survey activities are planned prior to February 2024 but are not included here as they would not occur during the effective dates of the rule and an associated LOA.

^g Dates displayed here are for field work, as that would be the only component that could impact marine mammals.

^h Although cable landfall activities are anticipated to occur over 9–12 months total, activities capable of harassing marine mammals would only occur for the specified duration described here as other activities necessary for landfall construction (*i.e.*, area preparation, material transportation, etc.) would also occur.

Specified Geographic Region

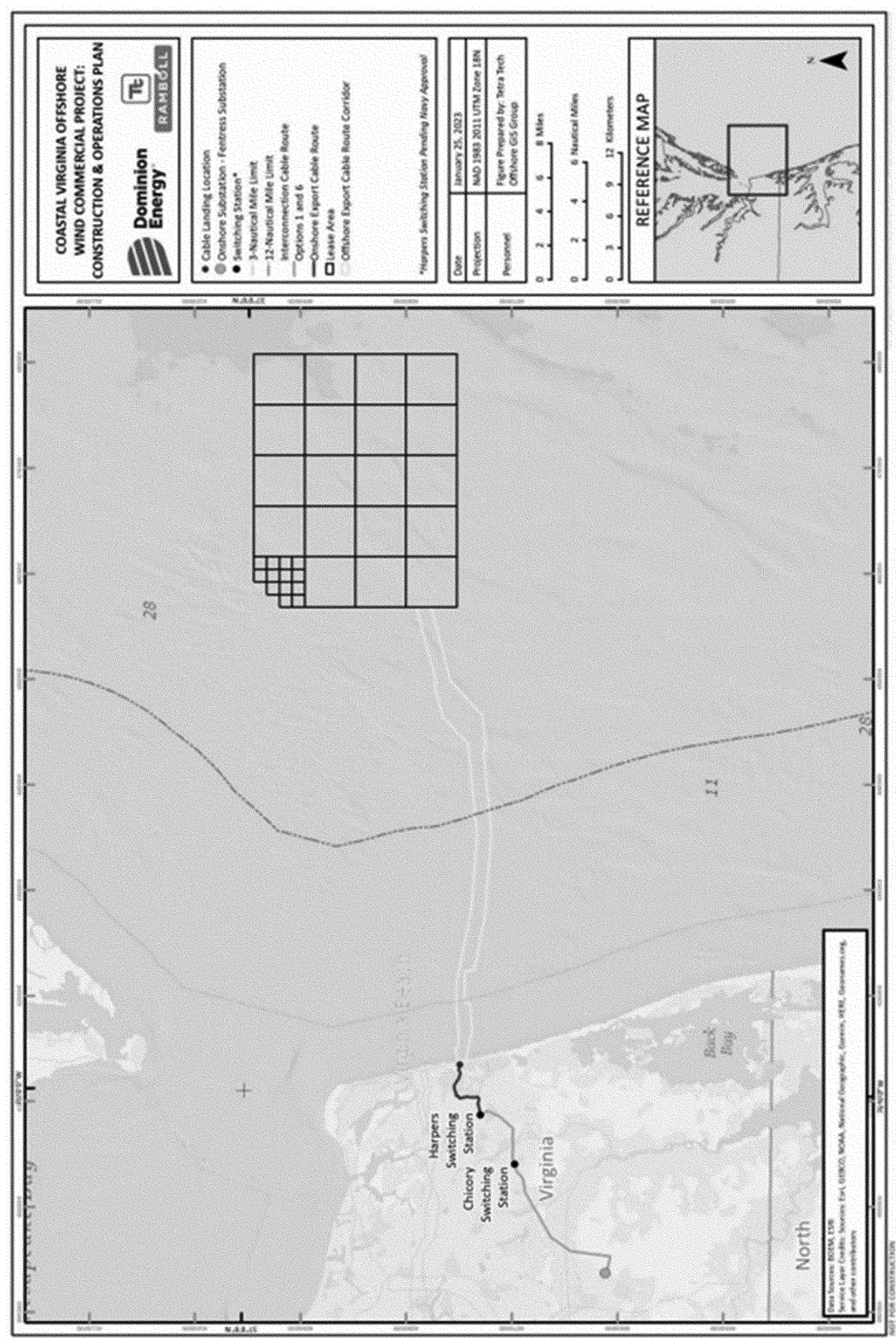
A detailed description of the Specified Geographic Region is provided in the proposed rule as published in the **Federal Register** (88 FR 28656, May 4, 2023). Since the proposed rule was published, no changes have been made to the Specified Geographic Region. Generally,

Dominion Energy's specified activities (*i.e.*, vibratory and impact pile driving of WTGs on monopile and OSS on jacket foundations; vibratory pile driving (installation and removal) of temporary cofferdams; impact pile driving (installation) of goal posts; placement of scour protection; trenching, laying, and burial activities associated with the installation of the export cable and

inter-array cables; HRG site characterization surveys; and WTG operation) are concentrated in the Project Area (Figure 1). A couple of Dominion Energy's specified activities (*i.e.*, fishery and ecological monitoring surveys and transport vessels) will occur in the Mid-Atlantic Bight.

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Figure 1—Project Area



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Comments and Responses

A notice of proposed rulemaking was published in the **Federal Register** on May 4, 2023 (88 FR 28656). The

proposed rulemaking described, in detail, Dominion Energy’s specified activities, the specified geographic activity, 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 Dominion Energy'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. The proposed rule was available for a 30-day public comment period.

In total, NMFS received 169 comment submissions, comprising 161 individual comments from private citizens and 6 comment letters from organizations or public groups including, but not limited to: the Marine Mammal Commission (the Commission), Oceana, Inc. (Oceana), SELC, Responsible Offshore Development Alliance (RODA), West Coast Pelagic Conservation Group (WPCPG); and the Virginia Department of Wildlife Resources (VDWR). Some of the comments received are considered out-of-scope, including, but not limited to, comments related to the non-offshore wind farm development; concerns for other species outside of NMFS' jurisdiction (*i.e.*, birds, tortoises, bats, insects); costs associated with offshore wind development; recycling of turbine components; national security concerns; other projects that are not the CVOW-C Project; and project decommissioning, which would occur outside the effective period of this rule. These comments are not described herein or discussed further. Moreover, where comments recommended that the final rule include mitigation, monitoring, or reporting measures that were already included in the proposed rule and such measures are carried forward in this final rule, they are not included here, as those comments did not raise significant points for NMFS to consider. Furthermore, if a comment received was unclear, we do not include it here as we could not determine whether it raised a significant point for NMFS to consider. NMFS also received a comment letter from Gatzke Dillion & Ballance LLP on behalf of the Committee for a Constructive Tomorrow (CFACT), the American Coalition for Ocean Protection (ACOP), and the Heartland Institute after the close of the public comment period.

The six letters (*i.e.*, Oceana, RODA, WPCPG, SELC, VDWR, and the Commission), as well as individual comments, received during the public comment period contained significant points that NMFS considered in its estimated take analysis, including: required mitigation, monitoring, and

reporting measures; final determinations; and final regulations. These are described and responded to below. All substantive comments and letters are available on NMFS' website: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. Please review the corresponding public comment link for full details regarding the comments and letters.

Modeling and Take Estimates

Comment 1: The Commission claimed NMFS "underestimated the numbers of Level A harassment and Level B harassment takes (including failing to round up to group size) . . .". Specifically, the Commission claimed NMFS underestimated the number of takes for harbor seals because harbor seals occur in much greater numbers than gray seals off Virginia (*see* Jones and Rees, 2022).

Response: NMFS incorporated group size into the estimated take analysis (*see* the Estimated Take of Marine Mammals section in the proposed rule (88 FR 28656, May 4, 2023) and Estimated Take section of this final rule). The Commission did not provide specific recommendations to adjust any take estimates other than for harbor and gray seals. NMFS has reviewed the number of takes by Level A harassment and Level B harassment for all species and disagrees it is an underestimate.

While the Commission does indeed cite a relevant paper, Jones and Rees (2022), as the basis for their observation, NMFS does not believe this paper alone is enough justification for adjusting take. The study sites in Jones and Rees (2022) are not applicable to Dominion Energy's activities (*i.e.*, they are located in estuarine habitat) as NMFS does not expect these specific areas to be impacted by the construction work for CVOW-C.

Specifically in addressing the Commission's concerns with the 50/50 allocation of take for pinnipeds between each species, NMFS disagrees that this method is incorrect and that this approach over- or under-estimates take. The Duke University density models (Roberts *et al.*, 2023) group some species together (including phocid seals) to provide a single density estimate. While we acknowledge that more harbor seals have been observed in inland Chesapeake Bay waters than gray seals, there is not sufficient at-sea data to better proportion the number of takes by species; therefore, we assumed a 50/50 split consistent with Roberts *et al.* (2023). Importantly, for each species, we believe the maximum number of takes authorized in any given year ($n=84$ for

each species) is a reasonable estimate of the number of harassment takes that may occur incidental to the specified activities given the majority of work that may result in marine mammal harassment would be occurring during times (May 1st through October 31st) when seals are less likely to be present in Virginia waters. For these reasons, we disagree with the Commission's claim and have not modified the take estimate approach in this final rule.

Comment 2: A commenter disagreed with NMFS' preliminary small numbers determination based on the sum of takes for all species.

Response: Under the MMPA, the Secretary of Commerce, as delegated to NMFS, shall allow the incidental taking of "small numbers of marine mammals of a species or population stock" if specific findings are made (16 U.S.C. 1371(a)(5)(a)(i)). Thus, the small numbers finding is done at the species or population level. 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. NMFS has made the necessary small numbers finding for all affected species and stocks.

Comment 3: A commenter stated that there is the potential for repeated exposures to adversely affect species' or stocks' annual rates of recruitment or survival.

Response: NMFS fully considered the potential for repeated exposures in the proposed rule and this final rule when determining if the specified activities would result in a negligible impact to the affected species and stocks. The Negligible Impact Analysis and Determination section in both the proposed and final rules discusses the potential for repeated exposures and the potential related impacts. As described in those sections, NMFS has determined that the impacts resulting from the specified activities (recognizing that the potential for repeated exposures varies with the species due to habitat use (*e.g.*, migrating whales versus species that may remain in the area over longer periods of time)), will have a negligible impact on the affected species and stocks.

Comment 4: Commenters stated that there is no evidence or research proving that the CVOW-C Project would not cause the mortality or serious injury of marine mammals. The commenters further stated that there is no evidence proving that the estimated take

proposed by NMFS in the proposed rule is accurate or the maximum total.

Response: Regarding take by serious injury or mortality, the proposed rule clearly states that no serious injury and/or mortality is expected or proposed for authorization, and the same carries into the final rule for which no take by serious injury or mortality has been authorized (*see also* 50 CFR 217.292(c)).

Regarding the claim that there is no evidence proving the take estimates are accurate, the take numbers, as shown in the proposed and final rule, are based on the best available marine mammal density data, published and peer reviewed scientific literature, on-the-water reports from other nearby projects or past MMPA actions, and highly complex statistical models of which real-world assumptions and inputs have been incorporated to estimate on a project-by-project basis. In the Estimated Take section, NMFS has provided detailed rationale for why the number and manner of takes authorized in this final rule are reasonable and based on the best available science. The commenter did not provide any information to support their claim that take estimates are not representative of the take that may occur incidental to the project. NMFS disagrees with the commenter and expects that the take numbers authorized for this action are sufficient given the activity proposed and planned by Dominion Energy.

Mitigation

Comment 5: The commenter stated that the LOA must include conditions for the survey and construction activities that will first avoid adverse effects on North Atlantic right whales in and around the area and then minimize and mitigate the effects that cannot be avoided. This should include a full assessment of which activities, technologies and strategies are truly necessary to achieve site characterization and construction to inform development of the offshore wind projects and which are not critical, asserting that NMFS should prescribe the most appropriate techniques that would produce the lowest impact while achieving the same goals while prohibiting those other tools/techniques that would cause more frequent, intense, or long-lasting effects.

Response: The MMPA requires that we include measures that will effect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the rule should include conditions for the construction activities that will first avoid adverse effects on North Atlantic right whales in and around the project

area, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that this final rule meets this requirement to effect the least practicable adverse impact. The commenter does not make any specific recommendations of measures to add to the rulemaking.

NMFS is required to authorize the requested incidental take if it finds such incidental take of small numbers of marine mammals by the requestor while engaging in the specified activities within the specified geographic region will have a negligible impact on such species or stock and, where relevant, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. As described in this notice of final rulemaking, NMFS finds that small numbers of marine mammals may be taken relative to the population size of the affected species or stocks and that the incidental take of marine mammal from all of Dominion Energy's specified activities combined will have a negligible impact on all affected marine mammal species or stocks. It is not within NMFS' authority to determine if the requestor's specified activities are truly necessary or critical; however, NMFS does identify and has required in this final rule mitigation measures the effect the least practicable adverse impact on marine mammals.

Comment 6: The commenter stated that the LOA should use buffer zones to avoid any effects of turbine presence on North Atlantic right whales and foraging.

Response: Buffer zones have been suggested to mitigate impacts from offshore wind related activities near areas of significance (e.g., known feeding grounds). As described in the proposed rule and herein, the project area, located offshore Virginia, is not considered foraging habitat and while some opportunistic foraging may occur, it is primarily a migratory corridor. Therefore, NMFS disagrees that a new mitigation measure creating a buffer zone is necessary to effect the least practicable adverse impact on North Atlantic right whales.

Comment 7: One commenter recommended that NMFS require clearance and shutdown zones for all protected species that included (1) a minimum of 5,000 m (3.1 mi) for the visual and acoustic clearance zones; and (2) an acoustic shutdown zone that would extend at least 2,000 m (1.2 mi) in all directions from the driven pile location. Commenters also recommended that NMFS require pile-driving clearance and shutdown zones for large whales (other than North

Atlantic right whale) that are large enough to avoid all take by Level A harassment and minimize Level B harassment to the most practicable extent.

Response: The required shutdown and clearance zones (equally sized) for large whales (other than North Atlantic right whale) are based on the largest Level A harassment exposure range calculated for a mysticete, other than humpback whales, rounded up to the nearest hundred for PSO clarity. For all other species (e.g., dolphins, harbor porpoise, seals), 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, which were rounded up for PSO clarity. NMFS has determined that these zone sizes effect the least practicable adverse impact on marine mammals. Further, delaying the project unnecessarily due to very large clearance and shutdown zones could have unintended adverse impacts on marine mammals by extending the construction schedule. The commenters do not provide additional scientific information to support their suggestion to expand clearance and shutdown zones to the distances recommended. NMFS has not incorporated this recommendation into this final rule.

NMFS agrees that mitigation measures should be designed to avoid and minimize the potential for PTS and has included such measures in this rulemaking to effect the least practicable adverse impact on marine mammals. Specifically, in addition to requiring shutdown of pile driving if North Atlantic right whales are detected at any distance, NMFS has identified and required reasonable mitigation measures to avoid or minimize adverse impacts to marine mammals, such as setting this Project's impact pile driving clearance zones to be larger than the Level A harassment (PTS) zones for all other large whale species. NMFS believes that these measures are effective and would result in avoiding (North Atlantic right whale) or minimizing (other large whales) the takes by Level A harassment. We anticipate that where there is potential for Level A harassment, any auditory injury will be minimized through the implementation of noise abatement, soft starts, and clearance and shutdown zones. NMFS has made its required negligible impact finding based on the amount of take that may be authorized in the LOA.

NMFS agrees with the commenter that impacts should be minimized to the maximum extent practicable and we have done so with the required

mitigation measures. Enlargement of these zones is not practicable as it could interrupt and delay the project such that construction activities would occur over longer timeframes, which would incur additional costs but, importantly, also potentially increase the number of days that marine mammals are exposed to the disturbance. Conducting activities as expeditiously as possible when large whales are less likely to occur in the area is a means by which to minimize harassment. Accordingly, NMFS has determined that enlargement of these zones is not warranted, and that the existing required clearance and shutdown zones support a suite of measures that will effect the least practicable adverse impact on other large whales.

Comment 8: A commenter recommended that, to protect all protected species, NMFS should restrict pile driving at night while another recommended pile driving should only be allowed to continue after dark if the activity was started during daylight hours and must continue due to human safety or installation feasibility (*i.e.*, stability) concerns, but that nighttime monitoring protocols be required. A commenter suggested that if pile driving must continue after dark, Dominion Energy should be required to notify NMFS with these reasons and an explanation for exemption and that a summary of the frequency of these exceptions must be made publicly available to ensure that these are indeed exceptions, rather than the norm, for the project.

Response: Dominion Energy did not request, and NMFS did not evaluate, nighttime pile driving except in the following circumstance. In the proposed rule, we indicated that Dominion Energy must initiate pile driving prior to 1.5 hours before civil sunset and not before 1 hour after civil sunrise unless they submit to NMFS, for approval, an Alternative Monitoring Plan for nighttime pile driving activities. Within the final regulations and consistent with the commenter's recommendation, Dominion Energy will be allowed, due to safety and stability concerns, to finish piles at night when the pile has been started during daylight hours, in which they still must provide an Alternative Monitoring Plan for NMFS review and approval to ensure that they can appropriately monitor and mitigate for marine mammals in reduced visibility conditions. This Plan will describe the alternative monitoring technologies that would be used to observe for marine mammals, which as described in the proposed rule and carried over into the final rule, includes technologies such as

infrared or thermal cameras, that are considered practical in low-light conditions and other periods of reduced visibility to allow for the continuation of monitoring the applicable clearance and shutdown zones. This Alternative Monitoring Plan is also applicable to reduced visibility conditions.

Regarding the reporting requirement specified by the commenter, required weekly and monthly reports during foundation installation must contain information that would inform how long and when pile driving occurred, as Dominion Energy is required to document the daily start and stop times of all pile-driving activities. At minimum, a final annual report with this information will be made available to the public, as recommended by the commenter.

Comment 9: Given the potential of the project to increase the vessel traffic in and around the project area, a commenter suggests that the regulations include a vessel traffic plan to minimize the effects of service vessels on marine wildlife and include the following requirements for all project vessels, regardless of their function, ownership, or operator, to further reduce impacts to marine mammals: (1) all vessels associated with the proposed construction should be required to carry and use PSOs at all times when under way; and (2) limit all vessels, regardless of size, to speeds less than 10 knots (kn) at all times with no exceptions allowed. Alternatively, commenters suggest that project proponents could work with NMFS to develop an "Adaptive Plan" that modifies vessel speed restrictions if the monitoring methods informing the Adaptive Plan are proven as effective when for vessels traveling 10 kn or less and must follow a scientific study design. One commenter further suggested that if the Adaptive Plan is scientifically proven to be equally or more effective than a 10-kn speed restriction, that the Adaptive Plan could be used as an alternative to the 10-kn speed restriction. Identical or similar vessel mitigation measures were suggested by others.

Response: Dominion Energy is required to abide by a suite of vessel strike avoidance measures that include, for example, seasonal and dynamic vessel speed restrictions to 10 kn (18.5 km/hour) or less; required use of dedicated observers (*i.e.*, visual PSOs during construction activities or trained lookouts during vessel transit) on all transiting vessels; and a requirement to maintain awareness of North Atlantic right whale presence and occurrence through monitoring of North Atlantic right whale sighting systems (*i.e.*,

RWSAS, U.S. Coast Guard Channel 16, the establishment of any Dynamic Management Areas (DMAs)). Additionally, as included in the proposed rule and required in this final rule, Dominion Energy is required to submit a North Atlantic Right Whale Vessel Strike Avoidance Plan to NMFS for review and approval (*see* § 217.294(b)(16)). While a year-round 10-kn requirement could potentially fractionally reduce the already discountable probability of a vessel strike, this theoretical reduction is not expected to manifest in measurable real-world differences in impact. Further, additional limitations on speed have significant practicability impacts on applicants, in that, given the distance of CVOW-C's Lease Area offshore of Virginia, vessels trips to and from shore would significantly increase in duration to the extent that delays to the project and planned construction schedule would be likely to occur resulting in impracticable economic and resource (*e.g.*, vessel availability) constraints. Additionally, requiring a PSO on all transiting vessels (in lieu of trained crew members) also contribute to unnecessary and impracticable economic and resources issues (as space on vessels is limited), which could also extend the number of days necessary to complete all pile driving of foundations. While NMFS is requiring a dedicated observer to be aboard all transiting vessels, we find a dedicated trained crew member is sufficient to observe for marine mammals, particularly large whales, to further reduce risk of vessel strike. Furthermore, Dominion Energy has committed to the use of PAM within the vessel transit corridor to further aid in the detection of marine mammals. NMFS has determined that these and other included measures ensure the least practicable adverse impact on species or stocks and their habitat. Therefore, we are not requiring project-related vessels to travel 10 kn or less at all times.

Regarding an "Adaptive Plan", the proposed rule and this final rule contain adaptive management provisions that allows NMFS to modify mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goal(s) of the measure (*see* § 217.297(c)). Dominion Energy may also request modifications to the mitigation and monitoring measures (*see* § 217.297(a)–(b)). Therefore, NMFS disagrees that an Adaptive Plan is necessary to affect the least practicable adverse impact on marine mammals.

Comment 10: Commenters recommended that NMFS require

Dominion Energy to implement the best, commercially available combined NAS technology to achieve the greatest level of noise reduction and attenuation possible for pile driving, with a specific recommendation that NMFS require, at a minimum, a 10-dB reduction in SEL. The commenter further stated that NMFS should require field measurements to be taken throughout the construction process, including on the first pile installed, to ensure compliance with noise reduction requirements.

Response: NMFS agrees with the suggestion made by the commenters that underwater noise levels should be reduced to the greatest degree practicable to reduce impacts on marine mammals. As described in both the proposed and final rule, NMFS has included requirements for sound attenuation methods that successfully (evidenced by required sound field verification measurements) reduce real-world noise levels produced by impact pile driving of foundation installation to, at a minimum, the levels modeled assuming 10-dB reduction, as analyzed in this rulemaking. Preliminary sound measurements from South Fork Wind indicate that with multiple NAS systems, measured sound levels during impact driving foundation piles using a 4,000 kilojoules (kJ) hammer are below those modeled assuming a 10-dB reduction and suggest, in fact, that two systems may sometimes be necessary to reach the targeted 10-dB reductions. While NMFS is requiring that Dominion Energy reduce sound levels to at or below the model outputs analyzed (assuming a reduction of 10 dB), we are not requiring greater reduction as it is currently unclear (based on measurements to date) whether greater reductions are consistently practicable for these activities, even if multiple NAS systems are used.

In response to the recommendation by the commenters for NMFS to confirm that a 10-dB reduction is achieved, NMFS clarifies that, because no unattenuated piles would be driven, there is no way to confirm a 10-dB reduction; rather, *in-situ* SFV measurements will be required to confirm that sound levels are at or below those modeled assuming a 10-dB reduction.

In addition to the SFV requirements in the proposed rule, we added to this final rule the requirement that Dominion Energy must conduct abbreviated SFV monitoring (consisting of a single acoustic recorder placed at an appropriate distance from the pile) on all foundation installations for which the complete SFV monitoring, as

required in the proposed rule, is not carried out consistent with the Biological Opinion. NMFS is requiring that these SFV results must be included in the weekly reports. Any indications that distances to the identified Level A harassment and Level B harassment thresholds for whales must be addressed by Dominion Energy, including an explanation of factors that contributed to the exceedance and corrective actions that were taken to avoid exceedance on subsequent piles.

Comment 11: Commenters recommended that, for HRG surveys, NMFS require the use of PAM and include a 1,000-m (0.62-mi) acoustic clearance zone for North Atlantic right whales and also increase the visual clearance zone to 1,000 m for right whales. Another commenter recommended that NMFS increase the size of the visual clearance and shutdown zones during HRG surveys to 500 m (0.31 mi) for all other large whales. They also suggested that HRG surveys should be halted or shut down if North Atlantic right whales or other large whales are acoustically detected.

One commenter who also supported PAM during HRG surveys, stated that the real-time PAM system should be capable of detecting protected species at least 10,000 m (6.2 mi) and would be undertaken by a vessel other than the pile driving vessel or from a stationary unit to avoid masking effects of the hydrophone. The commenter also suggested that PAM be used during all impact pile driving, during vibratory pile driving of the cofferdams, and during HRG surveys.

Response: NMFS disagrees PAM is necessary 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. First, it is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including North Atlantic right whales) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 μ Pa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to

increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.*, 2012; McKenna *et al.*, 2012; Rolland *et al.*, 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.*, 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

Second, for HRG surveys, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 100 m via the GeoMarine Dual 400 Sparker at 800 joules); this reflects the fact that the source level is comparatively low and the intensity of any resulting impacts would be lower level. Further, the small harassment zone (and 500 m clearance and shutdown zones) are likely to be effectively monitored via visual means and PAM will only detect a portion of any animals exposed within these small zones. Together these factors support the limited value of PAM for use in reducing take with smaller zones.

NMFS also disagrees that the zones for North Atlantic right whales and other large whales should be expanded. As described in the proposed and final rules, the required 500-m clearance zone for North Atlantic right whales exceeds the modeled distance to the largest 160-dB Level B harassment isopleth (100 m (0.06 mi) during sparker use) by a large margin, minimizing the likelihood that they will be harassed in any manner by this activity. The 500-m distance is five times the estimated isopleth for the largest 160-dB Level B harassment threshold and we do not see a need to increase this further. Further, the commenters do not provide scientific information for NMFS to consider to support their recommendation to expand the clearance zone. As such, NMFS recognizes that requiring zones beyond those that meet the least practicable adverse impact standard could delay the project such that construction activities are extended to

the point that it is actually less beneficial for the species. Given that these surveys are relatively low impact, and that NMFS has prescribed a precautionary North Atlantic right whale clearance zone that is larger (500 m) than the largest estimated harassment zone (100 m), NMFS has determined that an increase in the size of the clearance and shutdown zones for North Atlantic right whales to 1,000 m is not warranted or practicable and the commenter does not provide new information supporting this comment. Similarly, increasing the size of the clearance and shutdown zones for other large whales to 500 m during HRG surveys is also not warranted or practicable and the commenter does not provide new information supporting this comment.

Regarding the use of PAM during cable landfall construction, although distances above the Level B harassment threshold are larger than for HRG surveys (3,100 m for temporary cofferdams and 1,450 m for temporary goal posts), the effects are not expected to rise to the level that would constitute Level A harassment (injurious take). Noise generated during cable landfall construction is of relatively short duration, low level, and in nearshore waters (which tend to be calmer than offshore) where PSO monitoring will be sufficient for detecting marine mammals to implement mitigation that effects the least practicable adverse impact on marine mammals. Similar to HRG surveys, given that the effects to marine mammals from cable landfall construction are expected to be limited to low level behavioral harassment (Level B harassment) even in the absence of mitigation (*i.e.*, no Level A harassment is expected or authorized), the limited additional benefit anticipated by adding this detection method for the short term cable landfall pile driving is not warranted or necessary to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Regarding the use of passive acoustic monitoring to implement the clearance and shutdown zones during foundation installation, as described in the proposed rule, NMFS is requiring the use of PAM to monitor 10 km zones around the piles and that the systems be capable of detecting marine mammals during pile driving within this zone. In this final rule, Tables 25 and 26 clearly specify this 10-km PAM monitoring zone. Dominion Energy is required to submit a PAM Plan to NMFS for approval at least 180 days prior to the planned foundation pile driving start date. NMFS will not approve a Plan

where hydrophones used for PAM would be deployed from the pile driving vessel as this would result in hydrophones inside the bubble curtains, which would clearly be ineffective for monitoring; therefore, there is no need to explicitly state in this rule that this would not be allowed.

As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

Comment 12: The Commission suggested that NMFS' proposed minimum visibility zone (2 km) during foundation pile driving is insufficient given that the Level A harassment zone for impact pile driving ranges from 3.2 to 5.7 km and that the Level B harassment zones range from 5.5 to 6.2 km for North Atlantic right whales.

Response: NMFS appreciates the suggestion by the Commission but does not agree that an increase of the minimum visibility zone is warranted. When modeling the PTS threshold zone sizes, Tetra Tech produced acoustic ranges ($R_{95\%}$). Acoustic ranges represent the distance to a harassment threshold based on sound propagation through the environment independent of any receiver. That is, the $R_{95\%}$ values represent the distance at which an animal would have to remain from a pile for the entire duration of exposure within a 24 hours period (in this case up to 2 monopiles per day or 2 pin piles per day). This assumption is unrealistic as we anticipate animals will move away from the source upon exposure as the area is primarily a North Atlantic right whale migration corridor and we do not anticipate whales to remain in the area for extended periods of time throughout the days. Further, the acoustic ranges are conservative in that they are calculated from 3D sound fields and then, at each horizontal sampling range, the maximum received level that occurs within the water column is used as the received level at that range. These maximum-over-depth (R_{\max}) values are then compared to predetermined threshold levels to determine acoustic and exposure ranges to Level A harassment and Level B harassment zone isopleths. However, the ranges to a threshold typically differ among radii from a source, and also might not be continuous along a radii because sound levels may drop below threshold at some ranges and then exceed threshold at farther ranges. To minimize the influence of these inconsistencies, 5 percent of the farthest such footprints are typically excluded from the model data. The resulting range, $R_{95\%}$, is then

chosen to identify the area over which marine mammals may be exposed above a given threshold, because, regardless of the shape of the maximum-over-depth footprint, the predicted range encompasses at least 95 percent of the horizontal area that would be exposed to sound at or above the specified threshold. $R_{95\%}$ excludes ends of protruding areas or small isolated acoustic foci not representative of the nominal ensonified zone. Finally, pile driving would occur during times when North Atlantic right whales are least likely to be in the Project Area. Creating a large minimum visibility distance despite the rarity of whales would unnecessarily delay the project such that work would be extended; thereby increasing the timeframe over which marine mammals may be exposed to construction activities.

For these reasons, NMFS does not believe it necessary to increase this zone size. Furthermore, even with the larger acoustic ranges produced from the conservative modeling, the minimum visibility zone does not differ greatly from those presented for other nearby projects which calculated distances to thresholds in consideration of animal movement (off of New Jersey, final Ocean Wind 1–1.65 km in the summer and 2.5 km in the winter; proposed Atlantic Shores South—1.9 km).

Comment 13: A commenter questioned why there was a depth restriction in Dominion Energy's Protected Species Mitigation and Monitoring Plan (PSMMP) when vessel speeds apply and recommended additional vessel restrictions regarding 10 kn or less within specific areas to reduce the risk of vessel strike on cetaceans.

Response: NMFS did not restrict any of the vessel speed measures to apply at specific depths; instead the measures are designed to apply to any and all vessel usage by Dominion Energy. Dominion Energy's project vessels would be restricted to 10 kn or less in certain circumstances, which include and in cases, go beyond existing vessel speed regulations. NMFS has included several measures in both the proposed and final rules that are sufficient to reasonably avoid vessel strike (see response to Comment 9 above for additional information). NMFS disagrees with the commenter that additional measures are necessary to avoid vessel strike.

Comment 14: A commenter suggested the NMFS should require Dominion to deploy additional noise attenuation technologies that, together with the double bubble curtain, reach a 15-

decibel (dB) reduction or greater in sound exposure level (“SEL”).

Response: NMFS acknowledges that underwater noise levels should be reduced to the greatest degree practicable to reduce impacts on marine mammals. As described in both the proposed and final rules, NMFS has included requirements for sound noise attenuation methods that successfully reduce foundation installation noise levels to, at a minimum, the levels modeled assuming 10-dB reduction. While NMFS is requiring that Dominion Energy reduce sound levels to equal or be below the model outputs analyzed (assuming a reduction of 10 dB), we are not assuming greater reduction as it is currently unclear (based on measurements to date) whether greater reductions are consistently practicable for these activities, even if multiple NAS systems are used. Preliminary sound measurements from South Fork Wind indicate that with multiple NAS systems, measured sound levels during impact driving foundation piles using a 4,000-kJ hammer are at or below those modeled assuming a 10-dB reduction and suggest, in fact, that two systems may sometimes be necessary to reach the targeted 10-dB reductions. In response to the recommendation by the commenters for NMFS to confirm that a 10-dB reduction is achieved, NMFS clarifies that, because no unattenuated piles would be driven, there is no way to confirm a 10-dB reduction; rather, *in-situ* SFV measurements will be required to confirm that sound levels are at or below those modeled assuming a 10-dB reduction. To further clarify, Dominion Energy must achieve an activity’s modeled sound reduction during foundation installation. If the modeled sound reduction is not achieved, additional measures are required to reduce those noise levels.

Comment 15: A commenter expresses concern that NMFS’ enhanced measures for North Atlantic right whales are not broadly applied to other ESA-listed large whale species. They also expressed concern over the Potential Biological Removal (PBR) for each stock not being assessed cumulatively based on the take authorized for CVOW–C and other threats to large whales.

Response: The commenter inappropriately conflates Level A harassment (e.g., auditory injury, PTS) and Level B harassment (i.e., behavioral disturbance) with mortality and serious injury through their reference to PBR levels. A stock’s PBR level is “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.” PBR is not an appropriate metric to evaluate the take allowed under the CVOW regulations in the manner suggested by the commenter, which is take by Level A harassment or Level B harassment, not mortality or serious injury (i.e., removals from the population). NMFS has described and used an analytical framework that is appropriate. We consider levels of ongoing anthropogenic mortality from other sources, such as commercial fisheries, in relation to calculated PBR levels as part of the environmental baseline in our negligible impact analysis.

Regarding cumulative impacts, NMFS refers the commenter to the response found in Comment 28 as the same information applies here. Furthermore, while the commenter is correct that enhanced mitigation and monitoring measures are required for North Atlantic right whales specifically, given their unique and precarious position, and that some of these measures will have beneficial effects on other species as well. For example, while PAM detections of a North Atlantic right whale, at any distance, would necessitate a shutdown/delay to any specified activity, we expect that other low-frequency specialists will benefit from the use of PAM (i.e., detections) as these will provide additional awareness to complement PSOs on visual observation. While we do acknowledge that the “at any distance” provision is not a blanket requirement across all species, we believe that the additional awareness provided by PAM, in addition to the conservative zone sizes will also reduce negative impacts to these other species. Requiring shutdowns/delays “at any distance” for all large whale species, regardless of status, could potentially extend the duration project activities would be necessary, as more frequent shutdowns/delays would otherwise be needed. There are offsetting benefits to completing the project activities (specifically foundation installation) in a shorter amount of time, as extending these construction periods due to more frequent shutdowns runs the risk of extending activities into months where species densities are higher in the Project Area.

Comment 16: A commenter recommended that NMFS work more to encourage the use of gravity-based and suction bucket foundations rather than piled foundations, as these foundations have demonstrated a potential for reduced impacts to marine mammals while providing potentially more flexibility to developers. They further

suggested that, if this isn’t possible for CVOW–C or other future projects, which NMFS works with BOEM to encourage measures that could lead to greater levels of noise reduction during pile driving.

Response: NMFS agrees that there are sound minimization benefits to marine mammals when using non-pile driven foundations, such as the results shown in recent publications (e.g., Potlock *et al.*, 2023). However, it is not within NMFS’ authority to determine the applicant’s specified activities. NMFS is required to authorize the requested incidental take if it finds such incidental take of small numbers of marine mammals by the requestor while engaging in the specified activities within the specified geographic region will have a negligible impact on such species or stock and, where relevant, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. As described in this notice of final rulemaking, NMFS finds that small numbers of marine mammals may be taken relative to the population size of the affected species or stocks and that the incidental take of marine mammals from all of the specified activities combined will have a negligible impact on all affected marine mammal species or stocks.

NMFS continually supports efforts to reduce ocean noise across various industries, including OSW. For example, NOAA’s Ocean Noise Strategy (<https://oceannoise.noaa.gov/>) articulates the agency’s vision for addressing ocean noise impacts to marine species, and NMFS supports BOEM’s Recommendations for Offshore Wind Project Pile Driving Sound Exposure Modeling and Sound Field Measurement document and BOEM’s Nationwide Recommendations for Impact Pile Driving Sound Exposure Modeling and Sound Field Measurement for Offshore Wind Construction and Operations Plans (<https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/FINAL%20Nationwide%20Recommendations%20for%20Impact%20Pile%20Driving%20Sound%20Exposure%20Modeling%20and%20Sound%20Field%20Measurement%20%28Acoustic%20Modeling%20Guidance%29.pdf>). NMFS and BOEM also are jointly working on the North Atlantic Right Whale and Offshore Wind Strategy (<https://www.noaa.gov/news-release/noaa-and-boem-announce-draft-offshore-wind-north-atlantic-right-whale-strategy>). All of these documents encourage reducing ocean noise,

including BOEM's establishment of quieting performance standards for OSW and conducting some level of SFVs on every pile installed, which NMFS has provided feedback on and supports. Finally, NMFS is collaborating with BOEM and the Department of Energy (DOE) on a recent funding notice focused on installation noise reduction and reliable moorings for offshore wind and marine energy (found here at: https://www.energy.gov/eere/wind/articles/funding-notice-installation-noise-reduction-and-reliable-moorings-offshore-wind?utm_medium=email&utm_source=govdelivery).

Comment 17: The commenters recommend that NMFS prohibit site assessment and site characterization activities during times of highest risk to North Atlantic right whales, using the best available science to define high-risk timeframes. In addition, the commenters suggest that NMFS should develop a real-time mitigation and monitoring protocol to dynamically manage the timing of site assessment and characterization activities to ensure those activities are undertaken during times of lowest risk for all relevant large whale species.

Response: As discussed in Comment 9, given the required vessel strike avoidance mitigation measures and small Level A harassment and Level B harassment isopleths for HRG surveys (54.2 m and 100 m, respectively), no Level A harassment, serious injury, or mortality is anticipated or authorized for this activity for any species, and the comparatively limited number of authorized takes by Level B harassment is expected to result in low-level impacts. The largest modeled Level B harassment zone size for the GeoMarine Dual 400 sparker (100 m) is already much smaller than the required separation and shutdown distances for North Atlantic right whale (500 m) and any unidentified large whale that would be treated as if it were a North Atlantic right whale. Furthermore, the proposed rule and this final rule include a framework of mitigation and monitoring measures designed to effect the least practicable adverse impact on marine mammals (see 50 CFR 217.294(e), 217.295). Therefore, NMFS disagrees there is a need to prohibit such surveys during "high-risk timeframes" and develop a dynamic management system.

Comment 18: One commenter recommended that all vessels responsible for crew transport (*i.e.*, service operating vessels) should use automated thermal detection systems to assist monitoring efforts while vessels are in transit.

Response: NMFS is requiring that all vessels, when transiting, must utilize trained, dedicated observers and, in the case of reduced visibility, use alternate technology to maintain visual monitoring, which may include infrared technologies (a type of thermal detection system). Dominion Energy is required to submit a Vessel Strike Avoidance Plan which will describe the type of technologies they propose to use to monitor for marine mammals. NMFS will evaluate that plan and determine if different or additional technology is required.

Comment 19: The commenter asserted that to minimize the impacts of underwater noise from HRG surveys to the fullest extent feasible, project proponents should select and operate sub-bottom profiling systems at power settings that achieve the lowest practicable source level for the objective.

Response: NMFS agrees with the suggestion made by the commenters that underwater noise levels should be reduced to the greatest degree practicable to reduce impacts on marine mammals. NMFS also agrees with the suggestion that Dominion Energy should utilize its HRG acoustic sources at the lowest practicable source level to meet the survey objective and has incorporated this requirement into the final rule (see § 217.294(e)(4)).

Comment 20: A commenter suggested that NMFS require: (1) at least 15 dB of sound attenuation from pile driving, with a minimum of 10 dB to be required; (2) field measurements be conducted on the first pile installed and the data must be collected from a random sample of piles through the construction period, although the commenter specifically notes that they do not support field testing of unmitigated piles; and (3) that all sound source validation reports of field measurements be evaluated by both NMFS and BOEM prior to additional piles being installed and that these reports be made publicly available. Another commenter has suggested that NMFS strengthen its requirement to maximize the level of noise reduction possible for the CVOW-C Project, utilizing 10 dB as the minimum only but meeting upwards of 20 dB of noise reduction. To support their assertion, they cited datasets by Bellmann *et al.* (2020 and 2022). They also recommended that NMFS require the "best commercially available combined NAS technology" to achieve noise reduction and attenuation.

Response: NMFS acknowledges that previous measurements (see Bellmann, 2019; Bellmann *et al.*, 2020) indicate

that the deployment of double big bubble curtains should result in noise reductions beyond the assumed 10 dB. However, when sound field verifications (SFV) measurements are conducted during construction, several factors come into play in determining how well modeled levels/isopleths correspond to those measured in the field, such as the level at the source, how well the noise travels in the environment, and the effectiveness of the deployed NAS across a broad range of frequencies. For these reasons, NMFS conservatively assumes only a 10-dB noise reduction. Furthermore, if SFV measurements consistently demonstrate that distances to harassment thresholds are less than those modeled assuming 10 dB attenuation, adjustments in monitoring and mitigation can be made by NMFS, upon request by Dominion Energy. We reiterate that there is no requirement to achieve 10-dB attenuation as no unattenuated piles would be driven; therefore, it is not possible to collect the data necessary to enforce this requirement. However, as described in Comments 10 and 14, we are requiring the developer to meet the noise levels modeled, assuming 10-dB attenuation. NMFS is also actively engaged with other agencies and offshore wind developers on furthering quieting technologies.

It is important to note that the assumed 10-dB reduction is not a limit, it is a conservative estimate of the likely achievable noise reduction, which along with all other modeling assumptions, allows for estimation of marine mammal impacts and informs monitoring and mitigation. However, we have incorporated requirements to add or modify NAS in the event that noise levels exceed those modeled.

NMFS notes that Dominion Energy must conduct SFV on three monopiles and on all OSS foundations (n=12 pin piles total) and, at this time, NMFS does not support unmitigated field testing for pile installation. If SFV acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10 dB attenuation), Dominion Energy may request a modification of the clearance and shutdown zones for foundation pile driving of monopiles. If requested and upon receipt of an interim SFV report, NMFS may adjust zones (*i.e.*, Level A harassment, Level B harassment, clearance, shutdown, and/or minimum visibility zone) to reflect SFV measurements. As part of the updates to the final rule, NMFS also requires maintenance checks and testing of NAS

systems before each use to ensure the NAS is usable and the system is able to achieve the modeled reduction, this information would be required to be reported to NMFS within 72 hours of an installation but before the next installation occurs.

Lastly, NMFS agrees that SFV reports (sound source validation reports) to NMFS should be required and evaluated by the agencies prior to further work commencing. NMFS agrees that the final SFV reports that have undergone quality assurance/quality control (QA/QC) by the agencies and include all of the required information to support full understanding of the results will be made publicly available; however, interim results without full review and all of the other supporting information are not ripe or appropriate for public availability.

Comment 21: A commenter stated that the seasonal restriction put into place for foundation pile driving for North Atlantic right whales should be assessed with regards to other marine mammal species, such as humpback whales, which may be present in higher numbers in the summer. They further suggested that additional protective approaches are needed for other species that may be present, such as the use of a real-time monitoring and mitigation system. Other commenters suggested dynamic management of activity temporal restrictions during project construction based on near real-time monitoring.

Response: NMFS acknowledges that the seasonal restriction for impact pile driving is to effect the least practicable adverse impact on North Atlantic right whales; however, NMFS notes that this seasonal restriction provides additional protections to large whale species that occur off of Virginia during summer months. For example, humpback whales, based on the Duke University density models (Roberts *et al.*, 2023), have higher occurrences in the late winter/early spring period (January through April) and reach their highest numbers within May and/or June. Subsequent declines in densities are noted after peak summer. Fin whales demonstrate a fairly year-round presence off of Virginia, with the highest densities occurring from November through May. We note that the highest densities are located in more offshore waters than the CVOW-C Project would be located and generally more northern in distribution. Harbor porpoises are primarily located off of Virginia from November through April, per Roberts *et al.* (2023). These durations almost all fall within the large seasonal restriction required by NMFS

(November through April), which would reduce much of the impact to animals transiting through the area.

Furthermore, Dominion Energy's analysis and take numbers were run assuming average seasonal densities, which may be slightly higher given increased densities when averaged with lower ones. Given that we expect marine mammals to actively be transiting through the area, rather than residing, impacts should be further lessened. While we acknowledge that some whales, such as the North Atlantic right whale, are acoustically detected year-round off of Virginia (Salisbury *et al.*, 2015), no scientific information or data supports the offshore Virginia waters as a Biologically Important Area for any other protected marine mammal species (besides the North Atlantic right whale migratory corridor). However, this is not to say that these species do not occur in these waters, but simply that the Virginia offshore waters are not primary habitat for essential life functions, such as foraging or calving, for other protected species. Instead, marine mammals primarily utilize these waters to transit to or from a more viable/important habitat.

Lastly, NMFS agrees that a near real-time monitoring system and protocols for North Atlantic right whales and other large whale species is a prudent and practicable measure and, as such, included real-time PSO monitoring and near real-time PAM (where practicable and effective (*i.e.*, foundation pile driving) in the proposed rule and the final rule (see Comments 21 and 22). Monitoring will inform whether other mitigation measures, such as delaying or shutting down a source, are triggered.

Monitoring, Reporting, and Adaptive Management

Comment 22: Commenters recommended that NMFS require real-time notifications of project activities (*e.g.*, HRG surveys, pile driving, *etc.*) and immediate notifications of any strandings or sightings of North Atlantic right whales or other protected species. Commenters also recommended NMFS make reports publicly available.

Response: The commenter did not identify why real-time notification to NMFS regarding project activities is necessary and NMFS does not agree this is necessary or practicable. Dominion Energy is required to submit weekly reports to NMFS during foundation installation, which includes project activities. It is not necessary for NMFS to track, in real-time, project activities.

NMFS agrees with the commenter that North Atlantic right whale reporting should be done in a timely manner. The

proposed and final rule each contain situational reporting requirements for every North Atlantic right whale sighting or acoustic detection immediately but also recognizes the potential for immediate communication to be challenging. In both of the proposed and final rules, NMFS has included a requirement that if a North Atlantic right whale is observed at any time by PSOs or project personnel, Dominion Energy 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, the U.S. Coast Guard, and the Right Whale Sightings Advisory System (RWSAS). This includes stranded animals. If the North Atlantic right whale is stranded, 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. Any acoustic detection of a North Atlantic right whale would be reported to NMFS as soon as possible, 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>).

PSOs and PAM operators are required to follow strict reporting requirements (*i.e.*, weekly and monthly (during foundation installation), and annually and situationally (all activities)) to document the sighting, behavior, species, *etc.* NMFS does not consider real-time reporting necessary, nor have we required it. "Real-time" reporting constitutes immediate or instantaneous notifications at the time of the sighting or observation. Instead, NMFS does, in the Monitoring and Reporting section, require "near real-time", which allows the notification to happen in a timely manner but after a reasonable delay when on the water. Weekly and monthly reports would be required for the duration of foundation installation. The final rule requires annual reports on sightings, activities, and take resulting from the project, and a 5-year report on all visual and acoustic monitoring. Situational reporting is required for any event that might need more direct NMFS-intervention (such as an adaptive

management need), due to the sighting of a large whale species, or an unexpected marine mammal interaction occurred or was detected. We also note that the commenter does not provide justification regarding what actions NMFS would be expected to undertake for real-time reporting, or why that would be necessary. In the event of sighting a dead or injured marine mammal, NMFS has included specific situational reporting requirements that would need to be undertaken as soon as feasible but within 24 hours. This feasibility requirement is necessary as there are many different situations that could occur on the water that could reduce communication potential, so NMFS allows the developer some time to maintain or recover communication if necessary. Because of this, NMFS does not see any issues with its requirements for situational reporting and feasibility and has opted not to change anything herein. The only circumstance wherein immediate reporting is required is in the unforeseen instance that a Project vessel strikes a marine mammal. The non-auditory injury or death of a marine mammal caused by vessel strike must be immediately reported to NMFS, and Dominion Energy 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. All final reports submitted to NMFS will be included on the website for availability to the public.

Comment 23: The commenter expressed concern regarding the PAM details and protocol as there is some variation on the “target” frequencies detectable based on the type of equipment chosen. The commenter stated that because of this ambiguity, “it is not possible to assess what the detection capabilities will be based on the information.”

The commenter suggested that the use of a PAM system with localization capabilities, if available, should provide sufficient information regarding presence within the clearance/shutdown zone, but also recommended the use of other technologies (e.g., semi-automated infrared systems, drones) to aid in marine mammal observation.

Response: As described in the proposed rule (88 FR 28656, May 4, 2023), Dominion Energy is required to submit a detailed PAM Plan to NMFS for approval that describes the PAM system(s) proposed for use. While the systems are not yet finalized (hence the variability noted by the commenter), NMFS has established criteria in the

proposed and final rules (e.g., the system must be capable of detecting baleen whales out to 10 km from the pile being installed). NMFS will evaluate if the bandwidth capabilities of the PAM system proposed meet these criteria. Furthermore, our Adaptive Management provision within the final rule allows us to adapt to new technology and information, which allows us, in discussions with Dominion Energy, to modify the PAM monitoring, as determined to be applicable.

NMFS disagrees that PAM alone should be used to monitor marine mammals and is requiring both visual and acoustic monitoring for specific specified activities. As described in the proposed rule, NMFS requires that Dominion Energy employ both visual and PAM methods as both approaches aid and complement each other (Van Parijs *et al.*, 2021). NMFS has also considered the use of semi-automated infrared systems to support visual monitoring. While Dominion Energy is free to propose using such systems, we are not requiring Dominion Energy to use such systems at this time (see Comment 23). Similar to the PAM Plan, NMFS requires Dominion Energy to submit, for approval, a Pile Driving Monitoring Plan that meets the criteria required in this final rule (e.g., visually observe for marine mammals to select distances). Similar to PAM, the Adaptive Management provision in the final rule allows for technological developments in monitoring or mitigation to be implemented, in coordination with Dominion Energy.

Comment 24: Commenter suggested that NMFS require tracking and monitoring for “unusual patterns” in protected species strandings specifically related to HRG surveys and other construction activities.

Response: As NMFS has explained in the proposed rule and in this final rule, strandings (e.g., mortality) are not an anticipated outcome of the specified activities, including HRG surveys, and there is no evidence to suggest otherwise. Further, marine mammal strandings are fully tracked and monitored via NMFS’ Marine Mammal Health and Stranding Response Program (<https://www.fisheries.noaa.gov/national/marine-life-distress/marine-mammal-health-and-stranding-response-program>). As such, NMFS disagrees that Dominion Energy should be required to track strandings.

Comment 25: A commenter requested NMFS define the frequency at which we would review any new information for modifications to the LOA via the Adaptive Management provision. A

commenter recommended this occur once a quarter, while allowing for a mechanism to undertake review and adaptive management on an *ad hoc* basis if a serious issue is identified (e.g., if unauthorized takes by Level A harassment are reported or if serious injury or mortality occurs). They have also recommended that NMFS incorporate review by independent subject-matter experts to increase transparency, to provide an opportunity to share information, and to allow for the input of additional scientific expertise.

Response: We disagree that the frequency at which information is reviewed should be defined in the Adaptive Management provision. The purpose of the Adaptive Management is to allow for the incorporation of new information as it becomes available, which could mean advancements and new information becomes available quickly (i.e., days or weeks) that would necessitate NMFS to consider adapting the issued LOA, or over long periods of time as robust and conclusive information becomes available (i.e., months or years). NMFS will be reviewing interim reports as they are submitted; hence, the quarterly review, as suggested by the commenter, is not necessary. NMFS retains the ability to make decisions as information becomes available, and after discussions with Dominion Energy about feasibility and practicability.

Regarding the suggestion for *ad hoc* changes in the event that additional take by Level A harassment or take via serious injury/mortality of a marine mammal occurs, we do not agree with the suggestion by the commenter. NMFS has included two relevant provisions in its final rule that state that “[t]ake by mortality or serious injury of any marine mammal species is not authorized” and that “it is unlawful for any person to . . . take any marine mammal specified in the LOA in any manner other than as specified in the LOA.” We refer the commenter to the “Prohibitions” portion of the regulatory text (see § 217.293). In the event Dominion Energy’s project takes any marine mammals in a manner that has not been authorized in the final rule (see § 217.293) these would be in violation of the MMPA and regulations and NMFS would undertake appropriate actions, as determined to be necessary (see 16 U.S.C. 1371(a)(5)(B)).

Lastly, regarding independent review, NMFS disagrees that such reviews should be incorporated into the adaptive management process. The MMPA and its implementing regulations require that incidental take

regulations be established based on the best available information and the MMPA does not proscribe use of independent, subject matter expert review of NMFS' determinations outside of the public comment process.

Comment 26: Commenters stated that the regulations must include a requirement for all phases of the CVOW-C site characterization to subscribe to the highest level of transparency, including frequent reporting to federal agencies, requirements to report all visual and acoustic detections of North Atlantic right whales and any dead, injured, or entangled marine mammals to NMFS or the U.S. Coast Guard as soon as possible and no later than the end of the PSO shift. A commenter stated that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the ITA should require all reports and data to be accessible on a publicly available website. Another commenter also suggested that all quarterly reports of PSO sightings must be made publicly available to continue to inform marine mammal science and protection.

Response: NMFS notes the commenters' recommendations to report all visual and acoustic detections of North Atlantic right whales and any dead, injured, or entangled marine mammals to NMFS are consistent with the proposed rule and this final rule (see Situational Reporting). We refer the reader to § 217.295(g)(13), (15)(i)–(v) of the regulations for more information on situational reporting. NMFS requires North Atlantic right whale sightings to be reported immediately (if not feasible, as soon as possible and no longer than 24 hours after the sighting). Similarly, if a North Atlantic right whale is acoustically detected at any time by a project-related PAM system, Dominion Energy must report the detection as soon as possible to NMFS, but no longer than 24 hours after the detection. Daily visual and acoustic detections of North Atlantic right whales and other large whale species along the Eastern Seaboard, as well as Slow Zone locations, are publicly available on WhaleMap (<https://whalemap.org/whalemap.html>). Further, recent acoustic detections of North Atlantic right whales and other large whale species are available to the public on NOAA's Passive Acoustic Cetacean Map website (<https://www.fisheries.noaa.gov/resource/data/passive-acoustic-cetacean-map>). Given the open access to the resources described above, NMFS does not concur that public access to quarterly PSO reports is warranted and we have not included this measure in

the authorization. However, NMFS will post all final reports to our website. We refer the commenters to § 217.295(g) for more information on reporting requirements in the regulations.

Effects Assessment

Comment 27: Commenters stated that NMFS must use the more recent and best available science, including population estimates, in evaluating impacts to North Atlantic right whales, given its critically endangered status. This includes using updated population estimates, recent habitat usage patterns for the project area, and a revised discussion of the acute, chronic, and cumulative stress on North Atlantic right whales in the region.

Response: NMFS has used the best available science in its analysis. Since issuance of the proposed rule, NMFS has finalized the 2022 Stock Assessment Report (SAR) indicating the North Atlantic right whale population abundance is estimated as 338 individuals (confidence interval: 325–350; 88 FR 4162, January 24, 2023). NMFS has used this most recent best available information in the analysis of this final rule. This new estimate, which is based off the analysis from Pace *et al.* (2017) and subsequent refinements found in Pace (2021), is included by reference in the draft and final 2022 Stock Assessment Reports (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>) and provides the most recent and best available estimate, including improvements to NMFS' right whale abundance model. More recently, 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). NMFS conservatively relies on the lower SAR abundance estimate in this final rule. The finalization of the draft to final 2022 SAR did 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 Dominion Energy's construction activities.

NMFS cannot require applicants to utilize specific models for the purposes of estimating take incidental to offshore wind construction activities, but we do require use of the Roberts *et al.* (2016, 2023) density data for all species, which represents the best available science regarding marine mammal occurrence.

The proposed rule includes discussion of North Atlantic right whale habitat use in the Project Area, which is

located off of Virginia (NMFS notes the comments provided incorrectly reference southern New England). The proposed rule also includes a discussion of the effects of stress on marine mammals from exposure to noise from the project; the discussion is informed by the best available science. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals and recognizes that Dominion Energy's activities have the potential to impact marine mammals through behavioral effects, stress responses, and temporary auditory masking. However, and specifically given the predicted exposures and number of authorized takes, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Dominion Energy will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. For pile driving activities, and also specifically given the predicted exposures and amount of authorized take, we do not expect that the impacts from these activities would result in acute or chronic acoustic exposure that would lead to long-term physiological stress responses as these activities will all be localized and performed for limited durations. Additionally, for all activities, NMFS has prescribed a robust suite of mitigation and monitoring measures, including extended distance shutdowns for North Atlantic right whales, seasonal restrictions, dual-PSO and PAM usage, and NAS use that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS' negligible impact analyses. Furthermore, the area in which CVOW-C is located is not a known feeding habitat for North Atlantic right whales, although it is found within the migratory corridor BIA for North Atlantic right whales. NMFS does not anticipate that North Atlantic right whales would be displaced from the area where Dominion Energy's activities would occur, and the commenter does not provide evidence that this effect should be a reasonably anticipated outcome of the specified activity.

With respect to cumulative impacts, please see response to Comment 28.

Comment 28: Several commenters raised concerns regarding the cumulative impacts of the multiple offshore wind projects being developed

throughout the range of marine mammals, including North Atlantic right whales, and specifically recommended that NMFS carefully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed, and potential activities on marine mammals to ensure that the cumulative effects are not “excessive” before the promulgation of the final rule.

Another member of the public expressed concerns over the number of North Atlantic right whales that have “already been killed” when combined with other offshore wind projects along the East Coast.

A member of the public has asked how NOAA is tracking the takes of several species, including marine mammals, and where this list can be found for the public. They have also asked how NOAA will determine an “acceptable” number of possible harassment/injuries/deaths for each species, annually, could occur.

Response: Neither the MMPA nor NMFS’ codified implementing regulations call for consideration of the take resulting from other activities in the negligible impact analysis. The preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989) states, in response to comments, that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (e.g., as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors).

The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There, NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this ITR as well as other ITRs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The ITRs are unrelated in the sense that they are discrete actions under section 101(a)(5)(A) issued to discrete applicants. Section 101(a)(5)(A) of the MMPA requires NMFS to make a determination that the take incidental to a “specified activity” will have a negligible impact on the affected species or stocks of marine mammals. NMFS’

implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals (see 50 CFR 216.104(a)(1)). Thus, the “specified activity” for which incidental take coverage is being sought under section 101(a)(5)(A) is generally defined and described by the applicant. Here, Dominion Energy was the applicant for the ITR, and we are responding to the specified activity as described in that application and making the necessary findings on that basis.

Through the response to public comments in the 1989 implementing regulations (54 FR 40338, September 29, 1989), NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for listed species, as appropriate. Accordingly, NMFS has adopted an Environmental Impact Statement (EIS) written by BOEM and reviewed by NMFS as part of its inter-agency coordination. This EIS addresses cumulative impacts related to Dominion Energy and substantially similar activities in similar locations. Cumulative impacts regarding the promulgation of the regulations and issuance of a LOA for construction activities, such as those planned by Dominion Energy, have been adequately addressed under NEPA in the adopted EIS that supports NMFS’ determination that this action has been appropriately analyzed under NEPA. Separately, the cumulative effects of Dominion Energy on ESA-listed species, including North Atlantic right whales, was analyzed under section 7 of the ESA when NMFS engaged in formal inter-agency consultation with the ESA Interagency Cooperation Division within the Office of Protected Resources. The Biological Opinion for CVOW–C determined that NMFS’ promulgation of the rulemaking and issuance of a LOA for construction activities associated with leasing, individually and cumulatively, are likely to adversely affect, but not jeopardize, listed marine mammals.

Given that each project is considered its own discrete action, for final marine mammal sightings recorded during each relevant project, NMFS directs the public to the relevant Project web page, where annual and final reports will be published describing the number of marine mammals detected within specific harassment zones to date and

across the entire effective period of the Project.

Regarding the number of North Atlantic right whales for which take has been authorized—NMFS reiterates that only Level B harassment (behavioral) is anticipated and has been authorized for this species. In looking at the maximum annual authorized number, Dominion Energy is authorized to harass no more than 7 North Atlantic right whales (assuming each instance of harassment occurs to a different individual), representing 2.04 percent of the total population. Over the course of 5 years, Dominion Energy would be authorized to harass up to 17 individual North Atlantic right whales. We expect that any instance of harassment would result in short-term impacts such as avoidance of the project area but not abandonment of their migratory habitat. Further, as described in the Negligible Impact Analysis and Determination Section, the location of the least area (44 km offshore) and seasonal restriction on foundation installation pile driving (the most impactful activity) provides high conservation benefit and greatly minimizes impacts on North Atlantic right whales (as evidenced by the very small amount of take authorized despite the size of the project). We reiterate that we do not anticipate, nor have we proposed or authorized, mortality or serious injury for any marine mammal species for the CVOW–C Project. This includes for North Atlantic right whales, where no Level A harassment is anticipated or authorized due to the mitigation measures required to be implemented by Dominion Energy.

Comment 29: Several commenters stated that more time and research is needed to understand what the impacts of offshore wind may be on the ocean and marine life.

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 a specified activity within a specified geographic region during a five-year period (or less) will have a negligible impact on such species or stock and where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses (16 U.S.C. 1371(a)(5)(A)). While the incidental take authorization must be based on the best scientific information available, the MMPA does not allow NMFS to delay issuance of the requested authorization on the presumption that new information will become available in the future. NMFS has made the required findings, based on the best scientific

information available and has included mitigation measures to effect the least practicable adverse impacts on marine mammals.

Other

Comment 30: Two commenters have encouraged NMFS to issue LOAs on an annual basis, rather than a single 5-year LOA, to allow for the continuous incorporation of the best available scientific and commercial information and to modify mitigation and monitoring measures as necessary and in a timely manner, as well as to account for the quickly evolving situation for the North Atlantic right whale.

Response: NMFS appreciates the commenter regarding our ITA process. While NMFS acknowledges the commenter's rationale, we do not think it is necessary to issue annual LOAs as: (1) the final rule includes requirements for annual reports (in addition to weekly and monthly requirements) to support annual evaluation of the activities and monitoring results, and (2) the final rule includes an Adaptive Management provision (see § 217.297(c)) that allows NMFS to make modifications to the mitigation, monitoring, and reporting measures found in the LOA if new information supports the modifications and doing so creates a reasonable likelihood of more effectively accomplishing the goals of the measures.

Comment 31: Several commenters have expressed concern regarding the recent whale deaths, which they claim are the result of offshore wind activities and pre-construction survey activities. Another commenter has suggested that NMFS should consider whether or not authorizing Level A harassment or Level B harassment should be permissible given the recent elevated public concern about potential impacts on marine mammals from offshore wind activities.

Another commenter has stated that NMFS cannot determine the cause of the recent whale deaths accurately without doing necropsies. Because of this, the commenter states that NMFS cannot determine that recent whale mortalities were not related to "the whales' diminished ability to determine its location due to acoustic damage to its echolocation systems" from offshore wind-related surveys (*i.e.*, HRG and site assessment surveys).

Lastly, another commenter stated that funding should be made available to: (1) train PSOs; (2) stranding network organizations to carry out necessary carcass recovery, examination, and diagnostic tests to exclude acoustic injuries as reasons for strandings

associated with HRG surveys and/or construction activities; and (3) understand how strandings of protected species in unusual patterns during or around times where HRG surveys/construction activities occur so that costs can be calculated for the relevant response (*e.g.*, offshore whale carcass towing, heavy equipment rentals, *etc.*) as well as to provide accountability on the cause of the stranding.

Response: There is no evidence that noise resulting from offshore wind development-related site characterization surveys, which are conducted prior to construction, could potentially cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing surveys. This point has been well supported by other agencies, including BOEM and the Marine Mammal Commission. The commenters offer no such evidence or other scientific information to substantiate their claim. NMFS will continue to gather data to help us determine the cause of death for these stranded whales.

The Marine Mammal Commission's recent statement supports NMFS' analysis: "There continues to be no evidence to link these large whale strandings to offshore wind energy development, including no evidence to link them to sound emitted during wind development-related site characterization surveys, known as HRG surveys. Although HRG surveys have been occurring off New England and the mid-Atlantic coast, HRG devices have never been implicated or causatively associated with baleen whale strandings." (Marine Mammal Commission Newsletter, Spring 2023). There is an ongoing Unusual Mortality Event (UME) for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016. Partial or full necropsy examinations were conducted on approximately half of the whales. 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 whales examined (roughly 90), about 40 percent had evidence of human interaction, either ship strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass) or had other causes of death including parasite-caused organ damage

and starvation. The best available science indicates that only Level B harassment, or disruption of behavioral patterns (*e.g.*, avoidance), may occur as a result of Dominion Energy's HRG surveys. NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity.

Additionally, NMFS has not authorized mortality or serious injury in this final rule, and such taking is prohibited under § 217.292(c) of the regulations and may result in modification, suspension, or revocation of an LOA issued under these regulations. NMFS notes there has never been a report of any serious injuries or mortalities of a marine mammal associated with site characterization surveys.

Furthermore, while NMFS agrees in the value of necropsies in determining the cause of death of a stranded marine mammal, NMFS stranding partners cannot perform necropsies on every dead animal as some of the carcasses were either too decomposed, not brought to land, or stranded on protected lands (*e.g.*, national and state parks) with limited or no access. Furthermore, and as described on our website, large whale necropsies are very complicated, requiring many people and typically heavy equipment (*e.g.*, front loaders, *etc.*). Some whales are found dead floating offshore and need to be towed to land for an examination. There can be limitations for access and using heavy equipment depending on the location where the whale stranded, including protected lands (parks or concerns for other endangered species) and accessibility (remote areas, tides that prevent access at times of day). Also, necropsies are the most informative when the animal died relatively recently. Some whales are not found until they are already decomposed, which limits the amount of information that can be obtained. Finally, funding is limited, and varies by location and stranding network partner. For more information on offshore wind and whales, we reference the commenter to our website: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/frequent-questions-offshore-wind-and-whales>.

Additionally, a commenter raised a concern regarding potential injury to "echolocation systems". All large whales that have stranded since December 2011, with the exception of three sperm whales, have been mysticete (baleen) whales (*e.g.*, humpback whales, minke whales),

which do not have the ability to echolocate, a process by which toothed whales (e.g., sperm whales) and dolphins emit high-frequency sounds from their melon to obtain information about objects (typically prey) in the water. Because baleen whales do not echolocate like toothed whales and dolphins, there is no concern over impeding such ability. Additionally, several species of delphinids and beaked whales have stranded off Virginia since 2011; however, there is no evidence that the acoustic sources used during HRG surveys contributed to these events.

Regarding available funding, as suggested by another commenter, Dominion Energy is responsible for acquiring NMFS-approved PSOs to conduct marine mammal monitoring as prescribed in its rule. PSOs working on the CVOW-C Project would not be involved in stranding response beyond the required reporting measures (i.e., reporting sightings of dead or injured marine mammals to the Stranding Response Network. The Marine Mammal Health and Stranding Response Program (MMHSRP) 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 Prescott Grant Program (<https://www.fisheries.noaa.gov/grant/john-h-prescott-marine-mammal-rescue-assistance-grant-program>) provides funding for members of the national marine mammal stranding network through a competitive grant process for (1) recovery and treatment (i.e., rehabilitation) of stranded marine mammals; (2) data collection from living or dead stranded marine mammals; and (3) facility upgrades, operation costs, and staffing needs directly related to the recovery and treatment of stranded marine mammals and the collection of data from living or dead stranded marine mammals. From 2001 through 2023, the Program awarded more than \$75.4 million in funding through 893 competitive grants to Stranding Network

members in 26 states, the District of Columbia, two territories, and three tribes.

Comment 32: A commenter has stated that there is a data need for information related to vessel density as it relates to changes in vessel routing and traffic patterns. The commenter further stated that the acquisition of this information would be beneficial when compared to species distribution and habitat data. They also stated that this data would provide context to any observed changes in rates of vessel strikes, fishing gear, entanglements, and impacts on fisheries in terms of gear loss and protected species interactions. They also suggested that NMFS should require vessels to maintain a specific transit (east and northeast of the Lease Area) to avoid nearshore areas.

Response: NMFS provided information related to the amount and types of vessels to be used for CVOW-C and is requiring that that all of Dominion Energy's vessels must be equipped with properly installed and operational AIS devices and that Dominion Energy must report all Maritime Mobile Service Identify (MMSI) numbers to NMFS Office of Protected Resources. This will allow for an evaluation of Dominion Energy vessel traffic movement. NMFS is not requiring Dominion Energy vessels to maintain a specific transit (East and Northeast of the Lease Area) to avoid nearshore areas as Dominion Energy must use ports and some aspects of work are located in nearshore waters requiring vessel use in that area. Therefore, restricting Dominion Energy vessels waters outside of the nearshore area (which is undefined by the commenter) is not practicable.

Comment 33: A commenter insisted that NOAA Marine Mammal Health and Stranding Program staff be guaranteed site access for response to and rescue of stranded animals. The commenter also expressed a desire for clarification on the photographs that could be taken during a sighting of a stranding, and that specific parameters should be discussed for these photos to allow for the appropriate response to be taken.

Response: NMFS cannot require access be given in all cases for stranded animals, as sometimes the carcass never returns to shore or strands on protected

lands, such as national or state parks, with limited access. Given these instances are situational and the appropriate actions are determined by trained specialists, we defer to their knowledge and expertise instead.

Regarding the comment on the photographs in the event of a stranding or dead animal, NMFS does not see a reason to require very specific parameters for these photographs, as all observations would be taken in the offshore environment where conditions are typically difficult. Additionally, we expect that few, if any, of the crew would be trained in proper necropsy technique to know which photographs to take or what to look for; instead, we ask the developer and their crew (alongside the NMFS-approved PSOs and PAM operators) to collect any evidence, information, and photographs they are capable of and have access to, instead of providing additional restrictions that may complicate the acquisition of important data. If a decision is made to retrieve or tow a carcass to shore, we expect that trained stranding specialists would be on hand to handle the specifics the commenter is referring to. Because of this, we do not see the need to require the suggestion by the commenter.

Comment 34: The commenter has stated that an oil spill contingency plan should be created in the event of an oil spill from CVOW-C.

Response: NMFS agrees with the commenter that this is an important consideration for the CVOW-C Project. We direct the commenter to BOEM, as an oil spill response plan was included in Appendix Q of the CVOW-C COP (<https://www.boem.gov/renewable-energy/state-activities/cvow-construction-and-operations-plan>) and within the final EIS developed for the project (<https://www.boem.gov/renewable-energy/state-activities/cvow-c>). Given NMFS is not authorizing incidental take from oil spills, we do not analyze this directly in our MMPA ITA and this is not discussed further.

Comment 35: A commenter recommended that Dominion Energy test and deploy an all-weather, semi-, or fully-automated whale detection system in the mouth of the Chesapeake Bay to reduce the risk of vessel strike.

Response: NMFS does not agree with the commenter that Dominion Energy must deploy an all-weather, semi-, or fully-automated whale detection system in the mouth of the Chesapeake Bay to reduce the risk of vessel strike. The commenter did not provide a description of additional benefits this type of system would achieve compared to the dual-PAM and visual observation requirements NMFS proposed and requires for vessel transit. Furthermore, the Woods Hole Oceanographic Institution, in collaboration with the CMA CGM Group, have deployed an acoustic monitoring buoy approximately 33 miles (53.12 km) off Norfolk, Virginia (see the press release at: <https://www.whoi.edu/press-room/news-release/whoi-and-cma-cgm-group-deploy-acoustic-monitoring-buoy-near-norfolk-virginia/>). While not located in the mouth of the Bay, this buoy provides near real-time detection for North Atlantic right whale calls, that will be publicly displayed on a website called Robots4Whales (<http://robots4whales.whoi.edu/>) and shared with mariners, including vessel captains. Based on the parameters suggested by the commenter along with the publicly available data from existing systems, we disagree with the commenter's recommendation.

Comment 36: The commenter has stated that nowhere in Dominion Energy's PSMMP does it describe a need for baseline information on species presence, distribution, and behavior. They further compound that while short-term impacts from surveys and construction activities are likely, long-term impacts from operation would be challenging to assess without baseline information. Because of this, the commenter has suggested that additional investments into gathering baseline information should occur, which would allow for increased monitoring during the construction and operation phases and that it should be mandated that baseline data is collected for all projects before approvals are given.

Response: NMFS notes to the commenter that this information would not be found in Dominion Energy's PSMMP, but information regarding species and baseline/known information is found in the ITA application itself (see NMFS' web page at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-dominion-energy-virginia-construction-coastal-virginia>). NMFS also included some information about species that have established BIAs or known UMEs in the proposed rule (see 88 FR 28656, 28672), with updates included where applicable in the final

rule. We additionally point the commenter to our website (<https://www.fisheries.noaa.gov/find-species>) and to the SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) for more information.

The MMPA requires NMFS to evaluate the effects of the specified activities based on 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 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. Furthermore, NMFS is required to withdraw or suspend an LOA if it determines that the authorized incidental take may be having more than a negligible impact on a species or stock. This determination is made following notice and opportunity for public comment, unless an emergency exists that poses a significant risk to the well-being of the marine mammal species or stock.

NMFS has duly considered the best scientific evidence available in its effects analysis. The *Potential Effects of Underwater Sound on Marine Mammals* section of the proposed rule included a broad overview of the potential impacts on marine mammals from anthropogenic noise and provided summaries of several studies regarding the impacts of noise from several different types of sources (e.g., airguns, Navy sonar, vessels) on large whales, including North Atlantic right whales. Offshore wind farm construction generates noise that is similar, or, in the case of vessel noise, identical, to noise sources included in these studies (e.g., impact pile driving and airguns both produce impulsive, broadband sounds where the majority of energy is concentrated in low frequency ranges), and the breadth of the data from these studies helps us predict the impacts from wind activities. In addition, as described in the proposed rule, it is general scientific consensus that behavioral responses to sound are highly variable and context-specific and are impacted by multiple factors including, but not limited to, behavioral state, proximity to the source, and the nature and novelty of the sound. Overall, the ecological assessments from offshore wind farm development in Europe and peer-reviewed literature on the impacts of noise on marine

mammals both in the U.S. and worldwide provides the information necessary to conduct an adequate analysis of the impacts of offshore wind construction and operation on marine mammals in the Atlantic Outer Continental Shelf. NMFS acknowledges that studies in Europe typically focus on smaller porpoise and pinniped species, as those are more prevalent in the North Sea and other areas where offshore wind farms have been constructed. The commenter did not provide additional scientific information for NMFS to consider.

Comment 37: A commenter asserts that the ITR and LOA process lacks transparency and there are no resources easily accessible to the public to understand what authorizations are required for each of these activities (pre-construction surveys, construction, operations, monitoring surveys, etc.). They requested NMFS improve the transparency of this process and move away from a "segmented phase-by-phase and project-by-project approach" for authorization. In addition, they requested NMFS provide a comprehensive list/table of all takes by Level A harassment and Level B harassment under currently approved and requested authorizations per project.

Response: The MMPA, and its implementing regulations allow, upon request, the incidental take of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region. NMFS authorizes the requested incidental take of marine mammals if it finds that the taking would be of small numbers, have no more than a "negligible impact" on the marine mammal species or stock, and not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence use. NMFS refers the public to its website for more information on the marine mammal incidental take authorization process and timelines (<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>).

NMFS emphasizes that an IHA or rulemaking/LOA does not authorize the activity itself but authorizes the take of marine mammals incidental to the "specified activity" for which incidental take coverage is being sought. In this case, NMFS is responding to Dominion Energy's request to incidentally take marine mammals in the course of constructing the CVOW-C Project. The authorization of the specified activities is not within NMFS' jurisdiction; instead, this falls under BOEM's

purview and NMFS refers the public to BOEM's website: <https://www.boem.gov/renewable-energy>. Additionally, for the commenter's awareness, NMFS maintains a list of all proposed and issued authorizations for renewable energy activities, including the requested, proposed, and/or authorized take is available on the agency website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

Lastly, regarding the commenter's concern about assessing all offshore wind projects cumulatively, NMFS will not repeat the response but instead refers the commenter to Comment 28, where we explain why each project is considered discrete and as its own separate action.

Comment 38: A commenter stated that the presence of wind turbines will impact NMFS' ability to conduct low-altitude (1,000 m) marine mammal assessment aerial surveys, thus impacting NMFS' ability to continue using current methods to fulfill its mission of precisely and accurately assessing and managing protected species.

Response: NMFS and BOEM have collaborated to establish the Federal Survey Mitigation Strategy for the Northeast U.S. Region (Hare *et al.*, 2022). This interagency effort is intended to guide the development and implementation of a program to mitigate impacts of wind energy development on fisheries surveys. For more information on this effort, please see <https://repository.library.noaa.gov/view/noaa/47925>.

Comment 39: Expressing concerns regarding enforcement, commenters expressed interest in understanding the outcome if the number of actual takes exceeds the number authorized during construction of an offshore wind project (*i.e.*, if the project would be stopped mid-construction or operation), and how offshore wind developers will be held accountable for impacts to protected species such that impacts are not inadvertently assigned to fishermen, should they occur.

Another member of the public recommended that if a marine mammal is killed during the specified construction activities for CVOW-C, then Dominion Energy should "be fined a considerable sum."

Response: NMFS carefully reviews models and take estimate methodology to authorize a number of takes, by species and manner of take, which is a likely outcome of the project. There are several conservative assumptions built

into the models to ensure the number of takes authorized is sufficient based on the description of the project. Dominion Energy would be required to submit frequent reports which would identify the number of takes applied to the project.

In the unexpected event that Dominion Energy exceeds the number of takes authorized for a given species, the MMPA and its implementing regulations state that NMFS shall withdraw or suspend the 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, or the taking allowed is having, or may have, more than a negligible impact on the species or stock concerned (16 U.S.C. 1371(a)(5)(B); 50 CFR 216.206(e)). Additionally, failure to comply with the requirements of the LOA may result in civil monetary penalties and knowing violations may result in criminal penalties (16 U.S.C. 1375; 50 CFR 216.206(g)).

Moreover, as noted previously, fishing impacts (and NMFS' assessment of them) generally center on entanglement in fishing gear, which is a very acute, visible, and severe impact (mortality or serious injury). In contrast, the impacts incidental to the specified activities are primarily acoustic in nature and limited to Level A harassment and Level B harassment, there is no anticipated or authorized serious injury or mortality that the fishing industry could theoretically be held accountable for. Any take resulting from the specified activities would not be associated with take authorizations related to commercial fish stocks. The impacts of commercial fisheries on marine mammals and incidental take for said fishing activities are managed separately from those of non-commercial fishing activities such as offshore wind site characterization surveys, under MMPA section 118.

Comment 40: A commenter suggested that NMFS require Dominion Energy to utilize direct-drive turbines instead of gearboxes.

Response: Dominion Energy has indicated they intend to use direct drive turbines for the CVOW-C Project, based on Section 3.3.1.1 of their COP, specifically the Siemens Gamesa SG 14-222 DD WTG model (see <https://www.boem.gov/renewable-energy/state-activities/cvow-construction-and-operations-plan>). Furthermore, as already described above in Comment 37, the applicant is the one to determine the project (*i.e.*, the Proposed Action), not NMFS.

Comment 41: A commenter suggested various mitigation and monitoring measures in the event that gravity-based and/or suction-bucket foundations are used instead of impact/vibratory-driven foundations (*i.e.*, clearance and shutdown zones at distances that they assert would eliminate all take by Level A harassment of North Atlantic right whales and other large whales; visual and acoustic monitoring for large whales; shutdown for large whale visual observations or acoustic detections; restart of construction after shutdown; use of near-real time PAM for vessel(s); alternative monitoring technologies for monitoring (infrared drones, hydrophones); mandatory vessel speed restrictions; and required reporting).

Response: NMFS appreciates the suggestions by the commenter and refers to Comment 16 above where we discuss gravity-based and other foundation types for the CVOW-C Project. However, Dominion Energy did not include the potential to use gravity-based and/or suction-bucket foundations in their MMPA application; therefore, NMFS has not analyzed, authorized incidental take, or promulgated mitigation, monitoring, or reporting measures for gravity-based or suction-bucket foundations.

Comment 42: Commenters expressed concern that whales would be displaced from the Project Area into shipping lanes or areas of higher vessel traffic, which could result in higher risks of vessel strike and that NMFS has not accounted for this impact in its analysis.

Response: NMFS acknowledges that whales may temporarily avoid the area where the specified activities occur. However, NMFS does not anticipate that whales will be displaced in a manner that would result in a higher risk of vessel strike, and the commenter does not provide evidence that either of these effects should be a reasonably anticipated outcome of the specified activity. Vessel traffic is concentrated closer to shore as vessels leave and return to ports such as the Port of Virginia, most notably within designated shipping lanes and as they enter the Chesapeake Bay. The density of vessel traffic dissipates as one moves offshore.

NMFS disagrees with the commenter that the risk of vessel strike was not considered in the analysis. NMFS takes the risk of vessel strike seriously and while we acknowledge that vessel strikes can result in injury or mortality, we have analyzed and determined that the potential for vessel strike is so low as to be discountable. Dominion Energy must abide by a suite of vessel strike avoidance measures that include, for

example, seasonal and dynamic vessel speed restrictions to 10 kn (18.5 km/hour) or less; required use of dedicated observers on all transiting vessels; maintaining awareness of North Atlantic right whale presence through monitoring of North Atlantic right whale sighting systems. Further, any observations of a North Atlantic right whale by project-related personnel would be reported to sighting networks, alerting other mariners to North Atlantic right whale presence. Both Dominion Energy and other mariners are required to abide by all existing approach and speed regulations designed to minimize the risk of vessel strike. Notably, Dominion Energy is restricted from installing foundations during the time of year when North Atlantic right whales are expected to be present in greatest abundance (November 1st through April 30th). Therefore, the potential for this activity to result in harassment is very small, as indicated by the low amount of take authorized. Further, NMFS has determined that any harassment from any specified activity is anticipated to, at most, result in some avoidance that would be limited spatially and temporally. It is unlikely that any impacts from the project would increase the risk of vessel strike from non-Dominion Energy vessels. The commenter has presented no information supporting the speculation that whales would be displaced from the Project Area into shipping lanes or areas of higher vessel traffic in a manner that would be expected to result in higher risks of vessel strike.

Comment 43: Commenters stated that it is “against the law to knowingly interfere with an endangered species and depletion of an entire population,” and they cited the Endangered Species Act (ESA) in support of this claim. They further state that the CVOW–C Project would “disrupt” the migration path of the North Atlantic right whale and, therefore, result in the extinction of this species.

Response: Under Section 7(a)(2) of the ESA, Federal agencies are required to consult with NMFS or the U.S. Fish and Wildlife Service, as appropriate, to ensure that the actions they fund, permit, authorize, or otherwise carry out will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitats. For the CVOW–C Project, our office (*i.e.*, the Office of Protected Resources) requested initiation of a Section 7 consultation for ESA-listed species with the NMFS Greater Atlantic Regional Fisheries Office on April 4, 2023. A Biological Opinion was

completed on September 19, 2023 (found here: <https://repository.library.noaa.gov/view/noaa/55495>), which concluded that the promulgation of the rule and issuance of LOAs 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. Because of this, NMFS’ action of finalizing the rulemaking and issuing LOAs for the CVOW–C Project is consistent with the ESA.

Furthermore, NMFS disagrees that the CVOW–C Project would “completely disrupt and destroy the North Atlantic Right Whale population and migration path,” as suggested by the commenters. NMFS is aware of no evidence to support this claim, nor did the commenters provide any. In total, the CVOW–C Project Area consists of approximately 456.5 km² of the entire 269,448 km² migratory BIA. No take by injury, serious injury, or mortality is authorized for the species. NMFS emphasizes that the authorized incidental take of North Atlantic right whales is limited to Level B harassment (*i.e.*, behavioral disturbance). As described in the proposed rule and this final rule (see Negligible Impact Analysis and Determination section), NMFS has determined that the Level B harassment of North Atlantic right will not result in impacts to the population through effects on annual rates or recruitment or survival.

Changes From the Proposed to Final Rule

Since the publication of the proposed rule in the **Federal Register** (88 FR 28656, May 4, 2023), NMFS has made changes, where appropriate, that are reflected in the final regulatory text and preamble text of this final rule. These changes are briefly identified below, with more information included in the indicated sections of the preamble to this final rule.

Changes to Information Provided in the Preamble

The information found in the preamble of the proposed rule was based on the best available information at the time of publication. Since publication of the proposed rule, new information has become available and has been incorporated into this final rule, as discussed below.

The following changes are reflected in the *Description of Marine Mammals in the Specified Geographic Region* section of the preamble to this final rule:

Given the release of NMFS’ final 2022 SARs (Hayes *et al.*, 2023), we have updated the North Atlantic right whale total mortality/serious injury (M/SI) amount from 8.1 to 31.2. This increase is due to the inclusion of undetected annual M/SI in the total annual serious injury/mortality. We have also updated the North Atlantic right whale abundance estimate based on Linden (2023).

Given the availability of new information, we have made updates to the UME summaries for multiple species (*i.e.*, North Atlantic right whale, humpback whale, minke whale).

The following changes are reflected in the Mitigation section of the preamble to this final rule:

We have added a general requirement that noise levels must not exceed those modeled, assuming 10 dB attenuation.

Because Dominion Energy has informed NMFS that the soft-start procedure in the proposed rule raises engineering feasibility and practicability concerns, we have removed the specific soft-start procedure identified in the proposed rule (*i.e.*, “four to six strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes”). This final rule still requires a soft-start for each WTG and OSS impact pile driving event.

In Tables 25 and 26, we have added the requirement for clearance and shutdown of pile driving based on PAM detections at 10 km (6.2 mi) that applies to all species except North Atlantic right whales, which would still require shutdown at any distance upon a detection.

We have added a requirement in the *Reporting* section for Dominion Energy to report operational sound levels from all installed piles, in alignment with a requirement from the Biological Opinion.

Changes in the Regulatory Text

We have made the following changes to the regulatory text, which are reflected, as appropriate, throughout this final rule and described, as appropriate, in the preamble.

For clarity and consistency, we revised two paragraphs in § 217.290 Specified activity and specified geographical region of the regulatory text to fully describe the specified activity and specified geographical region.

The following changes are reflected in § 217.294 Mitigation Requirements and the associated Mitigation section of the preamble to this final rule:

For clarity and consistency, we have reorganized and revised, as applicable,

the paragraphs in § 217.294 Mitigation requirements.

We have clarified the requirement that Dominion Energy deploy at least two functional noise abatement systems requires at least a double bubble curtain.

As described above, we updated the WTG and OSS impact pile driving soft-start procedural requirements.

The following changes are reflected in § 217.295 Monitoring and Reporting Requirements and the associated Monitoring and Reporting section of the preamble of this final rule:

For clarity and consistency, we have reorganized and revised, as applicable, the paragraphs in § 217.295 Monitoring and reporting requirements.

We have updated the process for obtaining NMFS approval for PSO and PAM operators to be similar to requirements typically included for seismic (*e.g.*, airgun) surveys and have clarified education, training, and experience necessary to obtain NMFS' approval.

We have added a requirement that the Lead PSO must have a minimum of 90 days of at-sea experience and must have obtained this experience within the last 18 months.

We have added a requirement to have at least three PSOs on pile driving vessels rather than two PSOs, as was originally described in the proposed rule.

We have added requirements that SFV must be conducted on every pile until measured noise levels are at or below the modeled noise levels, assuming 10 dB, for at least three consecutive monopiles.

We have removed the requirement to include HRG survey activities in the weekly report. This requirement is inconsistent with previously promulgated and issued incidental take authorizations for HRG survey activities and a rationale was not included in the

preamble of proposed rule to support this change. Consistent with previous authorizations, HRG survey activities are to be included in the annual report (see § 217.295(g)(7)).

We have removed the requirements for reviewing data on an annual and biennial basis for adaptive management and instead will make adaptive management decisions as new information warrants it.

Description of Marine Mammals in the Specified Geographic Region

As noted in the Changes From the Proposed to Final Rule section, updates have been made to the UME summaries of multiple species. These changes are described in detail in the sections below. We have also included new data on North Atlantic right whale abundance information (Linden, 2023) and updated the annual M/SI value presented in Table 2, based upon updates found in the final SARs (see Hayes *et al.*, 2023). Otherwise, this section has not changed since the publication of the proposed rule in the **Federal Register** (88 FR 28656, May 4, 2023).

Several marine mammal species occur within the specified geographic region. Sections 3 and 4 of Dominion Energy's ITA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species (Dominion Energy, 2023). NMFS fully considered all of this information, and we refer the reader to these descriptions in the application, adopted here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

mammal-stock-assessments) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which take is authorized under this final rule and summarizes information related to the species or stock, including regulatory status under the MMPA, ESA, and 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. Values presented in Table 2 are the most recent available data at the time of publication which can be found in NMFS' 2022 final SARs (Hayes *et al.*, 2023), available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>.

TABLE 2—MARINE MAMMAL SPECIES^e THAT MAY OCCUR IN THE PROJECT AREA AND BE TAKEN, BY HARASSMENT

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ^a	Stock abundance (CV, N _{min} , most recent abundance survey) ^b	PBR	Annual M/SI ^c
Order Artiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
<i>Family Balaenidae:</i> North Atlantic right whale ...	<i>Eubalaena glacialis</i>	Western Atlantic	E, D, Y	338 (0, 332, 2020); 356 (346–363, 2022) ⁱ .	0.7	ⁱ 31.2
<i>Family Balaenopteridae</i> (<i>rorquals</i>):						
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	-, -, Y	1,396 (0; 1,380; 2016) ...	22	12.15
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	-, -, N	21,968 (0.31; 17,002; 2016).	170	10.6
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
<i>Family Physeteridae:</i> Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	E, D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
<i>Family Kogiidae:</i> Pygmy sperm whale ^{g h}	<i>Kogia breviceps</i>	Western North Atlantic	-, -, N	7,750 (0.38; 5,689; 2016)	46	0

TABLE 2—MARINE MAMMAL SPECIES^e THAT MAY OCCUR IN THE PROJECT AREA AND BE TAKEN, BY HARASSMENT—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ^a	Stock abundance (CV, N _{min} , most recent abundance survey) ^b	PBR	Annual M/SI ^c
Family Delphinidae:						
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	-, -, N	39,921 (0.27; 32,032; 2016).	320	0
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	-, -, N	93,233 (0.71; 54,433; 2016).	544	27
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic—Off-shore. Southern Migratory Coastal	-, -, N -, -, Y	62,851 (0.23; 51,914; 2016). 3,751 (0.6; 185; See SAR).	519 23	28 0–18.3
Clymene dolphin ^g	<i>Stenella clymene</i>	Western North Atlantic	-, -, N	4,237 (1.03; 2,071; 2016)	21	0
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	-, -, N	172,974 (0.21; 145,216; 2016).	1,452	390
False killer whale ^g	<i>Pseudorca crassidens</i>	Western North Atlantic	-, -, N	1,791 (0.56; 1,154; 2016)	12	0
Melon-headed whale ^g	<i>Peponocephala electra</i>	Western North Atlantic	-, -, N	UNK (UNK; UNK; 2016)	UNK	0
Long-finned pilot whale ^f	<i>Globicephala melas</i>	Western North Atlantic	-, -, N	39,215 (0.3; 30,627; 2016).	306	29
Short-finned pilot whale ^f	<i>Globicephala macrorhynchus</i> ...	Western North Atlantic	-, -, Y	28,924 (0.24, 23,637, See SAR).	236	136
Pantropical spotted dolphin	<i>Stenella attenuata</i>	Western North Atlantic	-, D, N	6,593 (0.52, 4,367, See SAR).	44	0
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	-, -, N	35,215 (0.19; 30,051; 2016).	301	34
Family Phocoenidae (porpoises):						
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31; 74,034; 2016).	851	16
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal ^d	<i>Halichoerus grypus</i>	Western North Atlantic	-, -, N	27,300 (0.22; 22,785; 2016).	1,389	4,453
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	-, -, N	61,336 (0.08; 57,637; 2018).	1,729	339

^a 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.

^b NMFS' marine mammal stock assessment reports can be found online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

^c These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike).

^d 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.

^e Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2023)).

^f Although both species are described here, the authorized take for both short-finned and long-finned pilot whales has been summarized into a single group (pilot whales spp.).

^g While these species were not originally included in Dominion Energy's request, given recorded sightings/detections of these species during previous Dominion Energy IHA's in the same general area, NMFS included Level B harassment of these species both in the proposed rule and this final rulemaking.

^h Estimate is for *Kogia* spp. only.

ⁱ In the proposed rule (88 FR 28656, May 4, 2023), the best available science (i.e., the NMFS draft 2022 SARs) included a North Atlantic right whale M/SI value of 8.1 which accounted for detected mortality/serious injury. In the final 2022 SAR, released in June 2023, the total annual average observed North Atlantic right whale mortality was updated from 8.1 to 31.2. Numbers presented in this table (31.2 total mortality (22 of which are attributed to fishery-induced mortality) are 2015–2019 estimated annual means, accounting for both detected and undetected mortality and serious injury (Hayes et al., 2023).

^j The current SAR includes an estimated population (N_{best} 338) based on sighting history through November 2020 (Hayes et al., 2023). In October 2023, NMFS released a technical report identifying that, based on sighting data through December 2022 (versus the SAR which includes sighting data through November 2020), 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).

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 **Federal Register** notice for the proposed rule (88 FR 28656, May 4, 2023). Since that time, a new SAR (Hayes et al., 2023) has become available for the North Atlantic right whale. Annual M/SI increased

from 8.1 to 31.2. This large increase in annual serious injury/mortality is a result of NMFS including undetected annual M/SI in the total annual M/SI. Additionally, NMFS released a technical report, which includes a recently released population estimate of 356 (Linden, 2023). We are not aware of any additional changes in the status of the species and stocks listed in Table 2; therefore, detailed descriptions are not provided here. Please refer to the proposed rule **Federal Register** notice

for these descriptions (88 FR 28656, May 4, 2023). Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

North Atlantic Right Whale

In June 2023, NMFS released its final 2022 SARs, which updated the annual M/SI value from 8.1 to 31.2 due to the addition of estimated undetected mortality and serious injury, as described above, which had not been previously included in the SAR. The

population estimate is slightly lower than the North Atlantic Right Whale Consortium's 2022 Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.*, 2023). Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast, with the leading category for the cause of death for this UME determined to be "human interaction," specifically from entanglements or vessel strikes. Since publication of the proposed rule, the number of animals considered part of the UME has increased. As of December 19, 2023, there have been 36 confirmed mortalities (dead, stranded, or floaters), 0 pending mortalities, and 34 seriously injured free-swimming whales for a total of 70 whales. As of October 14, 2022, the UME also considers animals (n=51) with sublethal injury or illness (called "morbidity") bringing the total number of whales in the UME to 121. More information about the North Atlantic right whale UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event>.

Humpback Whale

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. This event was declared a UME in April 2017. Partial or full necropsy examinations have been conducted on approximately half of the 212 known cases (as of December 19, 2023). Of the whales examined (approximately 90), about 40 percent had evidence of human interaction, either vessel strike or entanglement (refer to <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast>). While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast>.

Since December 1, 2022, the number of humpback strandings along the mid-Atlantic coast, including Virginia, 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 are reportedly close to shore in the winter. These prey also attract fish that are of interest to recreational and commercial fishermen. This increases the number of boats and fishing gear in these areas. More whales in the vicinity of areas traveled by boats of all sizes increases the risk of vessel strikes. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales.

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 December 19, 2023, a total of 160 minke whales have stranded during this UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings have shown evidence of human interactions or infectious disease in several of the whales, but these findings are not consistent across all of the whales examined, so more research is needed. This UME has been declared non-active and is pending closure. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-minke-whale-unusual-mortality-event-along-atlantic-coast>.

Phocid Seals

Since June 2022, elevated numbers of harbor seal and gray seal mortalities have occurred across the southern and central coast of Maine. This event was declared a UME in July 2022. Preliminary testing of samples has found some harbor and gray seals are positive for highly pathogenic avian influenza. While the UME is not occurring in the Project Area, the populations affected by the UME are the same as those potentially affected by the Project. However, due to the two states being approximately 677.6 km (421 mi) apart, by water (from the most northern point of Virginia to the most southern point of Maine), NMFS does not expect that this UME would be further conflated by the activities related to the Project. Information on this UME is available online at: <https://www.fisheries.noaa.gov/2022-2023-pinniped-unusual-mortality-event-along-maine-coast>.

The above event was preceded by a different UME, occurring from 2018–

2020 (closure of the 2018–2020 UME is pending). Beginning in July 2018, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire, and Massachusetts. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation encompassed all seal strandings from Maine to Virginia. A total of 3,152 reported strandings (of all species) occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along>.

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; Wartczok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their

associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS
(NMFS, 2018)

Hearing group	Generalized [hearing range]*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, Kogia, river dolphins, <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).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013). For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

NMFS notes that in 2019a, Southall *et al.* recommended new names for hearing groups that are widely recognized. However, this new hearing group classification does not change the weighting functions or acoustic thresholds (*i.e.*, the weighting functions and thresholds in Southall *et al.* (2019a) are identical to NMFS 2018 Revised Technical Guidance). When NMFS updates our Technical Guidance, we will be adopting the updated Southall *et al.* (2019a) hearing group classification.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the Project's specified activities have the potential to result in the harassment of marine mammals in the specified geographic region. The proposed rule (88 FR 28656, May 4, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Dominion Energy's project activities on marine mammals and their habitat. That information and analysis is adopted by reference into this final rule and is not repeated here; please refer to the notice of the proposed rule (88 FR 28656, May 4, 2023).

Since publication of the proposed rule, new scientific information has become available that provides additional insight into the sound fields produced by turbine operation.

Recently, Holme *et al.* (2023) stated that Tougaard *et al.* (2020) and Stöber and Thomsen (2021) extrapolated levels for larger turbines and should be interpreted with caution since both studies relied on data from smaller turbines (0.45 to 6.15 MW) collected over a variety of environmental conditions. They demonstrated that the model presented in Tougaard *et al.* (2020) tends to overestimate levels (up to approximately 8 dB) measured to those in the field, especially with measurements closer to the turbine for larger turbines. Holme *et al.* (2023) measured operational noise from larger turbines (6.3 and 8.3 MW) associated with three wind farms in Europe and found no relationship between turbine activity (power production, which is proportional to the blade's revolutions per minute) and noise level, although it was noted that this missing relationship may have been masked by the area's relatively high ambient noise sound levels. Sound levels (root-mean-square (RMS)) of a 6.3 MW direct-drive turbine were measured to be 117.3 dB at a distance of 70 meters. However, measurements from 8.3 MW turbines were inconclusive as turbine noise was deemed to have been largely masked by ambient noise.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this rulemaking, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

Authorized takes would be primarily by Level B harassment, as use of the acoustic sources (*i.e.*, impact and vibratory pile driving and site characterization surveys) have the potential to result in disruption of marine mammal behavioral patterns due to exposure to elevated noise levels. Impacts such as masking and TTS can contribute to behavioral disturbances.

There is also some potential for auditory injury (Level A harassment) to occur in select marine mammal species incidental to the specified activities (*i.e.*, WTG and OSS foundation pile driving). For this action, this potential for PTS is limited to mysticetes, high-frequency cetaceans, and phocids due to their hearing sensitivities and the nature of the activities. The required mitigation and monitoring measures are expected to minimize the severity and magnitude of the taking to the extent practicable. As described previously, no serious injury or mortality is anticipated or authorized for this project. Below we describe how the take numbers were estimated.

Generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

Marine Mammal Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

A summary of all NMFS' thresholds can be found at (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>).

Level B Harassment

Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, other noises in the area, ambient noise), and the receiving animals (*e.g.*, hearing, motivation, experience, demography, behavior at time of exposure, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely

to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above the received root-mean-square sound pressure levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile-driving, drilling) and above the received RMS SPL 160 dB re: 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Dominion Energy's construction activities include the use of continuous (*i.e.*, vibratory pile driving) and intermittent (*i.e.*, impact pile driving, HRG acoustic sources) sources, and

therefore, the 120 and 160 dB re 1 μ Pa (rms) thresholds are applicable.

Level A Harassment

NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). Dominion Energy's planned activities include the use of non-impulsive sources.

These thresholds are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—ONSET OF PERMANENT THRESHOLD SHIFT (PTS)
(NMFS, 2018)

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{p,0-pk,flat}$: 219 dB; $L_{E,p, LF,24h}$: 183 dB	Cell 2: $L_{E,p, LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{p,0-pk,flat}$: 230 dB; $L_{E,p, MF,24h}$: 185 dB	Cell 4: $L_{E,p, MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{p,0-pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	Cell 4: $L_{E,p, HF,24h}$: 198 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{p,0-pk,flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	Cell 8: $L_{E,p,PW,24h}$: 201 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0-pk}$) has a reference value of 1 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 (ISO) standards (ISO, 2017). The subscript "flat" is included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.*, 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Dominion Energy would not conduct high-order detonation of unexploded ordnances or munitions and explosives of concern (UXOs/MECs) as part of the Project. As Dominion Energy has not requested, and NMFS has not authorized, any take related to the detonation of UXOs/MECs, the acoustic (*i.e.*, PTS onset and TTS onset for underwater explosives) and the pressure thresholds (*i.e.*, lung and gastrointestinal tract injuries) are not discussed or included in this action.

Acoustic and Exposure Modeling Methods

As described above, underwater noise associated with the construction of offshore components of CVOW-C would predominantly result from installation of the WTG monopile and the OSS jacket foundations using a dual-vibratory and impact pile driving approach while noise from cable landfall construction activities (*i.e.*, temporary cofferdam and temporary goal post installation and removal) will

primarily result from either impact pile driving (for the temporary goal posts) or vibratory pile driving (for the temporary cofferdams). Acoustic modeling was performed for some activities for which there was a pile driving component, including WTG and OSS foundation installation and temporary cofferdam installation and removal. The basic modeling approach is to characterize the sounds produced by the source, determine how the sounds propagate within the surrounding water column,

and then estimate species-specific exposure probability by considering the range- and depth-dependent sound fields in relation to animal movement in simulated representative construction scenarios.

Animat exposure modeling was only performed for foundation installation. For other activities planned by Dominion Energy (*i.e.*, temporary cofferdam installation and removal, temporary goal post installation and removal, HRG surveys), take was estimated using a “static” approach for representing animal distribution and density, as detailed later in the *Static Take Estimate Method* section.

Dominion Energy employed Tetra Tech, Inc. (Tetra Tech) to conduct the acoustic modeling and Marine Acoustics, Inc. (MAI) for the animal movement modeling to better understand both the sound fields produced during foundation and cofferdam installation and to estimate any potential exposures (see the Acoustic Modeling report in Appendix A of Dominion Energy’s ITA application). Dominion Energy also collaborated with the Institute for Technical and Applied Physics (iTAP) for information related to vibratory pile driving of foundation piles. Tetra Tech also performed the acoustic analysis related to temporary cofferdam installation and removal via vibratory pile driving. Acoustic source modeling of vibratory pile driving related to cofferdam installation and removal was incorporated into the static method to yield estimated and requested take values. Tetra Tech applied the source modeling methods from the CVOW Pilot Project with modifications based on newly available data and the additional availability of research studies. The approach is summarized here; more detail can be found in the Acoustic Modeling report in Appendix A of Dominion Energy’s ITA application.

Acoustic Source Modeling

Based on a literature review of pile driving measurement reports, theoretical modeling reports, and peer-reviewed research papers (see the references in Attachment Z–2 in Appendix A of Dominion Energy’s COP (2023)), Tetra Tech developed an empirical modeling approach for calculating the acoustic source of impact pile driving foundation installation activities for the CVOW–C Project. A collaboration between Dominion Energy and iTAP assessed the estimated acoustic source levels produced from vibratory pile driving of foundation piles based on empirical data collected and assessed from the

CVOW Pilot Project and other European offshore wind farms. These two modeling approaches are discussed separately here.

Foundation Impact Pile Driving Source Level Empirical Model

An empirical model developed by Tetra Tech was used to determine the peak sound level (L_{pk}) and sound exposure level (SEL) at the source for the foundation pile driving scenarios. To feed into the model, Tetra Tech obtained sound levels from relevant scenarios for a variety of pile diameter sizes, driven with hammers of varying energies, and collected or analyzed at different ranges from the impacted pile. This empirical model was implemented by using the following steps:

1. Normalizing the received sound pressure levels to a common received range, assuming a transmission loss of $15\text{Log}R$ (*i.e.*, practical spreading), where R is the distance ratio;

2. Scaling the source levels to an energy of 4,000 kJ, assuming a relationship between the hammer energy and radiated sound as 10 times the base 10 logarithm of the ratio of hammer energy to the referenced hammer energy (as in the scaling laws outlined in von Pein *et al.*, 2022); and
3. Calculating a linear regression of the adjusted source levels (which has been normalized for range and hammer energy) as a function of the base 10 logarithm of the pile diameters, which is then used to predict the broadband SEL and peak sound levels for the planned energy and diameter.

The above empirical model was used in determining L_{pk} and SEL, however, a similar technique for sound pressure level (SPL) was not possible due to a lack of data. For this reason, SPL was derived from SEL using the average pulse duration of measurements used in the empirical model. One-third octave band levels from 12.5 Hz to 20 kHz were derived from surrogate spectra taken from published data for piles of similar diameters and adjusted based on the empirical model above. For the L_{pk} underwater acoustic modeling scenario (evaluating a single pile-driving strike), the pile driving sound source was represented as a point source at a mid-water depth. To estimate SEL, the monopile and pin pile driving scenarios were modeled using a vertical array of point sources spaced at 1 m intervals and assuming a specific number of strikes for each type of pile (see Formula 2 in Attachment Z–1 of Appendix A in the application). The SPL scenario was set up in an identical manner to the SEL scenario, with the primary difference being that the model did not incorporate

the total number of pile driving strikes needed for each of the monopile and pin pile scenarios within a 24-hour period. Instead, only a single pile driving strike was incorporated.

Information on the impact pile driving scenarios and source levels for WTGs, OSSs, and goal posts can be found in Table Z–7 of Appendix A of Dominion Energy’s ITA application. These impact modeling scenarios assumed no sound attenuation. For all WTG monopile modeling (*i.e.*, Scenarios 1–3 including standard driving and hard-to-drive installation approaches), a single strike SEL source level of 226 was assumed. For OSS modeling using pin piles, a single strike SEL source level of 214 dB was assumed. For goal post installation, a single strike SEL source level of 183 dB was assumed (California Department of Transportation (CALTRANS), 2015).

Foundation Vibratory Pile Driving Source Level Empirical Model

Limited empirical data exists for the installation of large foundation piles by vibratory driving, with most being measured by iTAP (see Remmers and Bellmann (2021) in Appendix A of the application (Attachment Z–3)). Current datasets contain a variety of different information, including ranges of water depths from several meters to depths of 40 m, different sediment types, and measured receiver distances from several meters away from the source up to 750 m away.

To predict the expected underwater noise levels during vibratory pile driving of 2.4 m pin piles for the OSS and 9.5 m monopiles, iTAP used the limited empirical data from several existing offshore wind farms from different pile diameters. All data were normalized to a distance from the source of 750 m assuming a propagation loss of $15\text{Log}R$. Given this normalization, uncertainties of <3 dB were expected. The data were plotted as a function of the pile diameter and then fit with a statistical regression curve (see the figure in Remmers and Bellmann (2021) Attachment Z–3 in Appendix A of Dominion Energy’s application). Using the resulting regression, iTAP predicted noise levels of 151 dB SPL for 2.4 m pin piles and 159 dB SPL for 9.5 m monopiles (the maximum size piles Dominion Energy plans to install), at a range of 750 m from the driven piles (Remmers and Bellmann (2021)). Based on possible influences of friction between the head of the vibratory hammer and the top of the piles, iTAP states that these results at 750 m from the piles may be overestimating the source level for vibratory pile driving.

For vibratory installation of cofferdams, adjusted one-third-octave band source levels (with a broadband source level of 195 dB SEL) were obtained from similar offshore construction projects and then adjusted to account for the estimated force needed to drive cofferdam sheet piles (see Schultz-von Glahn *et al.*, 2006).

Acoustic Propagation Modeling

To predict acoustic levels at range during foundation installation (impact and vibratory pile driving) and temporary cofferdam installation and removal (vibratory pile driving), Tetra Tech used sound propagation models, discussed below. For the installation and removal of goal posts and HRG surveys, Dominion Energy assumed a practical spreading loss rate (15logR). Below we describe the more sophisticated sound propagation modeling methodology.

Tetra Tech utilized a software called dBSea, which was developed by Marshall Day Acoustics (<https://www.dbsea.co.uk/>), to predict the underwater noise in similar environments to what might be encountered in the CVOW-C Project Area. Per Attachment Z-1 of the COP, Tetra Tech used different “solvers” (*i.e.*, algorithms) for the low and high-frequency ranges, including:

- **dBSeaPE (Parabolic Equation Method):** The dBSeaPE solver makes use of the range-dependent acoustic model (RAM) parabolic equation method, a versatile and robust method of marching the sound field out in range from the sound source. This method is one of the most widely used in the underwater acoustics community, offers excellent performance in terms of speed and accuracy in a range of challenging scenarios, and was used for low frequencies.

- **dBSeaRay (Ray Tracing Method):** The dBSeaRay solver forms a solution by tracing rays from the source to the receiver. Many rays leave the source covering a range of angles, and the sound level at each point in the receiving field is calculated by coherently summing the components from each ray. This is currently the only computationally efficient method at high frequencies and was used for frequencies of 800 Hz and greater.

Each model utilizes imported environmental data and manually placed noise sources in the aquatic environment, which could consist of either equipment in the standard dBSea database or a user-specific database (*i.e.*, the empirically determined source levels and spectra, discussed above). The software then allows the user to

include properties specific to the project site including bathymetry, seabed, and water column characteristics (*e.g.*, sound speed profiles, temperature, salinity, and current). Tetra Tech also incorporated variables for each pile to account for the soft-start of impact pile driving of foundation piles and pile penetration progression.

For the CVOW-C Project’s modeled environment using dBSea, bathymetry data were obtained by Tetra Tech from the National Geophysical Data Center and U.S Coastal Relief Model (NOAA Satellite and Information Service, 2020) and consisted of a horizontal resolution of 3 arc seconds (defined as 90 m (295.28 ft)). The data covered an area consisting of 138 km x 144 km (452,755.91 ft x 472,440.94 ft) with a maximum depth of 459 m (1,505.91 ft). Sound sources were placed near the middle of the bathymetry area. The bathymetry data were imported into the dBSea model and extents were set for displaying the received sound levels. Relatedly, sediment data were also included into the model as bottom sedimentation has the potential to directly impact the sound propagation. Dominion Energy’s site assessment surveys revealed the Project Area primarily consists of a predominantly sandy seabed. While not reiterated here, Appendix A of Dominion Energy’s application contains the tables that include the geoacoustic properties of the sub-bottom sediments for modeling scenarios involving the more offshore WTG and OSS foundations (see Table Z-5) and for the nearshore temporary cofferdams (see Table Z-6).

Given that the sound speed profile in an aquatic environment varies throughout the year, Tetra Tech calculated seasonal sound speed profiles based on the planned installation schedule presented for the CVOW-C Project. Dominion Energy would only install WTG and OSS foundations between May 1st and October 31st, annually, hence an average sound speed profile was calculated for this time period. Sound speed profile data were obtained from the NOAA Sound Speed Manager software incorporating World Ocean Atlantic 2009 extension algorithms. A sensitivity analysis was performed on the monthly sound speed information to determine the most conservative sound modeling results. The average sound speed profile obtained from this dataset was directly included into the dBSea model (see Figure 3 in Attachment Z-1 in Dominion Energy’s application (Appendix A)). This same approach was undertaken for temporary cofferdam installation.

The scenarios for WTG monopile and OSS jacket pin pile installation were modeled using a vertical array (based on third-octave band sound characteristics that was adjusted for site-specific parameters, including expected hammer energy and the number of hammers strikes needed per each scenario) of point sources spaced at 1-m intervals. Each of the third octave band center frequencies from 12.5 Hz up to 20 kHz of the source spectra was modeled. In order to conservatively account for the presence of pile driving sound at high-frequencies, a constant 15 dB/decade roll-off is applied to the modeled spectra after the second spectral peak. The spectra source levels for impact driving of monopile and pin piles can be found in Figure 10 of the CVOW-C ITA application. The vibratory pile driving spectra, which is available in Figure 11 of the ITA application, used reference information from iTAP (Gerke and Bellmann, 2012), the California Department of Transportation (CALTRANS, 2015), and from measurements of vibratory driving collected by Tetra Tech. Based on the description above, Tetra Tech determined an appropriate sound speed profile to input into dBSea by pulling the average sound speed profile for the construction period (May 1st to October 31st), following the schedule provided by Dominion Energy. No information was pulled for November 1st through April 30th, as no pile driving is planned due to seasonal restrictions regarding the North Atlantic right whale. The monthly sound speed profile for the planned WTG and OSS foundation construction period is found in Figure 12 in the CVOW-C ITA application.

The sound level estimates are calculated from the generated three-dimensional sound fields and then, at each sampling range, the maximum received level that occurs within the water column is used as the received level at that range. The dBSea model allows for a maximum received level-over-depth approach (*i.e.*, the maximum received level that occurs within the water column at each calculation point). These maximum-over-depth (R_{max}) values are then compared to predetermined threshold levels to determine exposure and acoustic ranges to Level A harassment and Level B harassment threshold isopleths. However, the ranges to a threshold typically differ among radii from a source and also might not be continuous along a radii because sound levels may drop below threshold at some ranges and then exceed threshold at farther ranges. Both the R_{max} (the maximum

range in the model at which the sound level was calculated) and $R_{95\%}$ (excludes ends of protruding areas or small isolated acoustic foci not representative of the nominal ensonified zone) were calculated for each of the relevant regulatory thresholds. The difference between R_{\max} and $R_{95\%}$ depends on the source directivity and the heterogeneity of the acoustic environment. To minimize the influence of these inconsistencies, 5 percent of the farthest such footprints were excluded from the model data. The resulting range, $R_{95\%}$, was chosen to identify the area over which marine mammals may be exposed above a given threshold because, regardless of the shape of the maximum-over-depth footprint, the predicted range encompasses at least 95 percent of the horizontal area that would be exposed to sound at or above the specified threshold.

Here we note that Tetra Tech and MAI did not calculate or provide exposure ranges to the Level A harassment SEL_{cum} thresholds in the ITA application as provided by other offshore wind developers in their ITA application. Instead, Dominion Energy chose to utilize acoustic ranges ($R_{95\%}$) values in its analysis, which NMFS concurs is also a reasonable and more conservative approach and likely results in somewhat comparatively larger zones. Dominion Energy's application and this rule include the $R_{95\%}$ ranges as these are representative of the expected underwater acoustic footprints during foundation and cofferdam installation.

Temporary cofferdams followed a similarly described approach. To estimate the distances to the harassment isopleths from the vibratory installation of sheet piles, it was assumed that the vibratory pile driver would use approximately 1,800 kilonewtons of vibratory force over 60 minutes. Given the close proximity of all temporary cofferdams in the nearshore environment and the relatively same installation depth (3.3 m), a single representative location (*i.e.*, the centermost cofferdam) was used for the modeling analysis. As already described above for foundation modeling, the same dBSea process using unique environmental variables and sediment data (*i.e.*, predominantly sand) was applied for cofferdams. Dominion Energy applied a summary sound speed profile to estimate propagation from cable landfall pile driving given this work would most likely occur between May 1st and October 31st. To calculate the ranges to acoustic thresholds, Tetra Tech utilized a maximum received level-over-depth approach where the maximum received sound level that

occurs within the water column at each sampling point was used. Tetra Tech calculated both the R_{\max} and the $R_{95\%}$ for each of the marine mammal regulatory thresholds.

Animal Movement Modeling

To estimate the probability of exposure of animals to sound above NMFS' harassment thresholds during foundation installation, MAI integrated the sound fields generated from the source and propagation models described above with marine mammal species-typical behavioral parameters (*e.g.*, dive parameters, swimming speed, and course/direction changes). Animal movement modeling was performed for all marine mammal species determined to potentially occur within the CVOW-C Project Area to estimate the amount of potential acoustic exposures above NMFS' Level A (PTS) harassment and Level B (behavioral) harassment thresholds. Animat modeling was conducted for four scenarios (three for WTGs, one for OSS) that were determined to be representative of the types of construction activities expected at three different locations (two for WTGs (one shallow (21 m (69 ft)) and one deep (37 m (121 ft)) location) and one for OSSs (28 m (92 ft))). These locations were selected to appropriately observe the range of effects of sound propagation. The modeled areas are shown in Figure Z-4 in Dominion Energy's Underwater Acoustic Assessment (Appendix A in the application).

MAI's animat modeling was conducted using the Acoustic Integration Model (AIM; Frankel *et al.*, 2002), which is a Monte Carlo based statistical model in which multiple iterations of realistic predictions of acoustic source use as well as animal distribution and movement patterns are conducted to provide statistical predictions of estimated effects from exposure to underwater sound transmissions. By using AIM, each acoustic source and receiver were modeled using the same concept as animats. For each species, separate AIM simulations were developed and iterated for each modeling scenario and activity location. During the simulations, animats were randomly distributed within the model simulation area and the predicted received sound level was estimated every 30 seconds to create a history over a 24-hour period. Animats were also pre-programmed to move every 30 seconds based upon species-specific behaviors. At the end of each 30 second interval, the received sound level (in dB RMS) for each animat was recorded.

Animats that exceed NMFS' acoustic thresholds were identified and the range for the exceedances determined. The output of the simulation is the exposure history for each animat within the simulation, and the combined history of all animats gives a probability density function of exposure during the project. The number of animals expected to exceed the regulatory thresholds is determined by scaling the probability of exposure by the species-specific density of animals in the area. By programming animats to behave like marine species that may be exposed to foundation installation noise during pile driving, the animats are exposed to the sound fields in a manner similar to that expected for real animals.

Static Take Estimate Method

Take estimates from cable landfall construction activities (cofferdam and goal post installation and removal) and HRG surveys were calculated based on a static method (*i.e.*, animal movement modeling was not conducted for these activities). Take estimates produced using the static method are the product of density, ensonified area, and number of days of pile driving work. Specifically, take estimates are calculated by multiplying the expected densities of marine mammals in the activity area(s) by the area of water likely to be ensonified above the NMFS defined threshold levels in a single day (24-hour period). Next that product is multiplied by the number of days pile driving is likely to occur. A summary of this method is illustrated in the following formula:

$$\text{Estimated Take} = D \times ZOI \times \# \text{ of days}$$

Where:

D = average species density (per 100 km²);
and

ZOI = maximum daily ensonified area to relevant thresholds.

This methodology was utilized for impact pile driving associated with goal posts, vibratory pile driving associated with temporary cofferdams, and active acoustic source use from HRG surveys as no exposure modeling was conducted.

Density and Occurrence

In this section, we provide information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. As noted above, depending on the species and activity type, and as described in the Estimated Take section for each activity type, the calculated number of takes and the number of takes that NMFS authorizes is based on the highest estimate of take resulting from

full consideration of density models, average group sizes, or site-specific survey data.

Dominion Energy applied the Duke University Marine Geospatial Ecology Laboratory marine mammal habitat-based density models (<https://seamap.env.duke.edu/models/Duke/EC/>) to estimate take from WTG and OSS foundation installation, temporary goal post installation and removal, temporary cofferdam installation and removal, and HRG surveys.

The Duke habitat-based density models delineate species' density into 5 x 5 km (3.1 x 3.1 mi) grid cells (as opposed to the 10 x 10 km (6.2 x 6.2 mi) grid cells previously used in past Roberts *et al.* datasets for all species, with exception for the North Atlantic right whale). Although the density grid cells are 25 km² (9.7 mi²), the values are still reported per 100 km² (38.6 mi²). Based on the area across which different specified activities are conducted (*i.e.*, WTG and OSS foundation installation, nearshore cable landfall activities, and HRG surveys), appropriate averaged density estimates are applied to exposure and/or take calculations for each area.

For foundation installation, densities were extracted from grid cells within the Lease Area and those extending 8.9 km (5.53 mi) beyond the Lease Area boundaries. The grid cells within the 8.9 km perimeter area were incorporated to account for the largest ensonified area to the Level B harassment threshold; thereby representing the furthest extent where potential impacts to marine mammals could be expected. The density in the grid cells selected were averaged for each month to provide a mean monthly density for each marine mammal species and/or stock. In some cases, the density models combine multiple species (*i.e.*, long-finned and short-finned pilot whales, gray and harbor seals) or stocks (*i.e.*, Southern migratory coastal and the Western North Atlantic offshore bottlenose dolphin stocks), or it may not be possible to derive monthly/seasonal densities for some species so annual densities were used instead (*i.e.*, pantropical spotted dolphins, pilot whale *spp.*).

Group Size and PSO Data Considerations

The exposure estimates from the animal movement modeling or static methods described above directly informed the take estimates. In some cases, adjustments to the density-based exposure estimates may be necessary to fully account for all animals that could be taken during the specified activities. This could consist of an adjustment based on species group size or observations or acoustic detections provided in monitoring reports.

For some species, observational data from PSOs aboard HRG survey vessels indicate that the density-based exposure estimates may be insufficient to account for the number of individuals or type of species that may be encountered during the planned activities. As an example, pantropical spotted dolphins have been included in the requested take request based on prior PSO observation data, obtained via the 2020–2021 monitoring report from under previously issued (and subsequently modified) HRG IHAs to Dominion Energy occurring in and around the Lease Area (see RPS (2018), AIS, Inc. (2020), and RPS (2021)). For other less-common species, the predicted densities from Roberts *et al.* (2023) are very low and the resulting density-based exposure estimate was less than a single animal or a typical group size for the species. In such cases, the mean group size was considered as an alternative to the density-based take estimates to account for potential impacts on a group during an activity.

Regardless of methodology used (*i.e.*, density-based, group size, PSO data), Dominion Energy requested, and NMFS has conservatively authorized, take based on the highest amount of exposures estimated from any given method. Below we present the results of the methodologies described above, including distances to NMFS thresholds, and take estimates associated with each activity.

WTG and OSS Foundation Installation

Here, we present the construction scenarios Dominion Energy applied to its analysis, which NMFS is carrying forward in this rule, and the resulting acoustic ranges to Level A harassment and Level B harassment thresholds,

exposure estimates, and take estimates from WTG and OSS foundation installation following the aforementioned modeling methodologies.

To complete the project, Dominion Energy has prepared four foundation installation construction schedules (three for WTG installation and one for OSS installation), as construction schedules cannot be fully predicted due to uncontrollable environmental factors (*e.g.*, weather) and installation schedules include variability (*e.g.*, due to drivability). Since three locations had been identified where OSSs would be constructed, the modeling relied on a single site that would result in further propagation distance. This site was determined to be representative of all three OSS locations.

For the monopile scenarios, two types of pile driving conditions are expected for each monopile installed: a standard pile driving situation (Scenario 1) and a hard-to-drive (Scenario 2) situation. During the installation of one monopile for WTG foundations per day, either a standard or hard-to-drive scenario may be necessary, which would determine the duration of vibratory driving and the number of impact hammer strikes needed. In situations where two monopile WTGs would be installed per day (*i.e.*, Scenario 3), Dominion Energy assumed that only one monopile would consist of a hard-to-drive scenario and the other would always be standard. Dominion Energy has committed to not installing two hard-to-drive foundations in a single day. For OSS jacket foundations, a single installation approach (*i.e.*, Scenario 4; impact pile driving only) is expected for the installation of up to two pin piles per day.

Dominion Energy has assumed that a maximum of two monopiles may be installed per day or that a maximum of two pin piles would be installed per day. No concurrent pile driving would occur. Due to the risk of pile run, Dominion Energy expects to utilize a joint vibratory-impact pile driving installation approach on all WTG and OSS foundation piles. All scenarios, including associated pile driving details, expected to occur can be found in Table 5 below.

TABLE 5—WTG AND OSS FOUNDATION INSTALLATION SCENARIOS

Installation scenario	Foundation installed ^a	Installation details	Duration of installation activity ^a
Scenario 1: Standard Driving	9.5 m diameter monopile foundation (1 pile per day).	Vibratory pile driving	60 minutes.
		Impact pile driving	3,240 hammer strikes (4,000 kJ).

TABLE 5—WTG AND OSS FOUNDATION INSTALLATION SCENARIOS—Continued

Installation scenario	Foundation installed ^c	Installation details	Duration of installation activity ^a
Scenario 2: Hard-to-drive	9.5 m diameter monopile foundation (1 pile per day).	Vibratory pile driving	30 minutes.
Scenario 3: One standard and one hard-to-drive ^b .	9.5 m diameter monopile foundations (2 piles per day).	Impact pile driving	3,720 hammer strikes (4,000 kJ).
		Vibratory pile driving	90 minutes.
Scenario 4: OSS Jacket Foundation	2.8 m diameter pin piles (2 piles per day).	Impact pile driving	6,960 hammer strikes (4,000 kJ).
		Vibratory pile driving	120 minutes.
		Impact pile driving	15,120 hammer strikes (3,000 kJ).

^a The hammer energy of 4,000 kJ represents the maximum hammer energy; however, Dominion Energy anticipates the energy will be less than this.
^b Two hard-to-drive piles would never be installed on the same day.
^c Dominion Energy may build up to two foundations per day, consisting of either WTG monopiles or pin piles per jacket foundations. However, on some days, only one monopile may be built per day and would consist of a single standard driven pile or a hard-to-drive pile.

As described above, underwater noise associated with the construction of offshore components of CVOW–C would predominantly result from vibratory and impact pile driving monopile and jacket foundations. As previously described, Dominion Energy employed Tetra Tech to conduct acoustic modeling and MAI to conduct animal movement exposure modeling to better understand sound fields produced during these activities and to estimate exposures. For installation of foundation piles, animal movement modeling was used to estimate exposures.

Presented below are the acoustic ranges to the Level A harassment and Level B harassment thresholds for WTG installation in the deeper environment (Table 6), WTG installation in the shallower water (Table 7), and OSS installation in the single representative location (Table 8). All ranges shown are assuming 10 dB of sound attenuation as Dominion Energy would employ a noise attenuation system (NAS; consisting of at least a double bubble curtain) during all vibratory and impact pile driving of monopile and jacket foundations. Although three attenuation levels were

evaluated, and Dominion Energy has not yet finalized its mitigation strategy, Dominion Energy and NMFS both anticipate that the noise attenuation system ultimately chosen will be capable of reliably reducing source levels by 10 dB. Therefore, modeling results assuming 10-dB attenuation are carried forward in this analysis for WTG and OSS foundation installation. See the Mitigation section for more information regarding the justification for the 10 dB assumption.

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Table 6 – Acoustic Ranges (R_{95%}), In Meters, To Level A Harassment (PTS) and Level B Harassment Thresholds For The Deep WTG Location For Marine Mammal Function Hearing Groups, Assuming An Average Sound Speed Profile and 10 dB of Sound Attenuation

Foundation Installation Parameters					Distance to Marine Mammal Thresholds (m)													
					Level A Harassment (PTS)												Level B Harassment (Behavioral)	
					LFC			MFC			HFC			PP			All species	
Installation Scenario	Pile Installed	Installation Approach	Maximum Hammer Energy	Installation duration (minutes)	219 L _p , pk	183 L _E , 24hr	199 L _E , 24hr	230 L _p , pk	185 L _E , 24hr	198 L _E , 24hr	202 L _p , pk	155 L _E , 24hr	173 L _E , 24hr	218 L _p , pk	185 L _E , 24hr	201 L _E , 24hr	160 L _p	120 L _p
Scenario 1: Standard driving	9.5 m diameter monopile (1 pile per day)	Impact	4,000 kJ	85	132	4,396	— ^a	29	170	— ^a	663	2,139	— ^a	141	1,267	— ^a	6,182	— ^a
		Vibratory	n/a	60	— ^a	— ^a	141	— ^a	— ^a	0	— ^a	— ^a	103	— ^a	— ^a	12	— ^a	8,866
Scenario 2: Hard-to-drive	9.5 m diameter monopile (1 pile per day)	Impact	4,000 kJ	99	132	4,980	— ^a	29	187	— ^a	663	2,304	— ^a	141	1,358	— ^a	6,182	— ^a
		Vibratory	n/a	30	— ^a	— ^a	113	— ^a	— ^a	0	— ^a	— ^a	87	— ^a	— ^a	3	— ^a	8,866
Scenario 3: One standard and	9.5 m diameter monopile (2	Impact	4,000 kJ	184	132	5,663	— ^a	29	226	— ^a	663	2,884	— ^a	141	1,756	— ^a	6,182	— ^a
		Vibratory	n/a	90	— ^a	— ^a	158	— ^a	— ^a	0	— ^a	— ^a	125	— ^a	— ^a	31	— ^a	8,866

Foundation Installation Parameters					Distance to Marine Mammal Thresholds (m)													
					Level A Harassment (PTS)												Level B Harassment (Behavioral)	
					LFC			MFC			HFC			PP			All species	
one hard- to- drive	piles per day)																	

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds; L_p = root-mean square sound pressure (dB re 1 μ Pa); L_E = sound exposure level (dB re 1 μ Pa² · s); $L_{p,pk}$ = peak sound pressure (dB re 1 μ Pa)
a – Dashes (–) indicate a value that was not calculated by Tetra Tech during the acoustic modeling analysis given the thresholds do not apply (e.g., distances to the peak impulsive threshold was not calculated for vibratory driving).

Table 7 – Acoustic Ranges (R_{95%}), In Meters, To Level A Harassment (PTS) and Level B Harassment Thresholds For The Shallow WTG Location For Marine Mammal Function Hearing Groups, Assuming An Average Sound Speed Profile and 10 dB of Sound Attenuation

Foundation Installation Parameters					Distance to Marine Mammal Threshold (m)													
					Level A Harassment (PTS)													Level B Harassment (Behavioral)
					LFC			MFC			HFC			PP			All species	
Installation Scenario	Pile Installed	Installation Approach	Maximum Hammer Energy	Installation duration (minutes)	219 L _p , pk	183 L _E , 24hr	199 L _E , 24hr	230 L _p , pk	185 L _E , 24hr	198 L _E , 24hr	202 L _p , pk	155 L _E , 24hr	173 L _E , 24hr	218 L _p , pk	185 L _E , 24hr	201 L _E , 24hr	160 L _p	120 L _p
Scenario 1: Stand and driving	9.5 m diameter monopile (1 pile per day)	Impact	4,000 kJ	85	128	3,138	— ^a	26	99	— ^a	607	1,659	— ^a	138	1,059	— ^a	5,503	— ^a
		Vibratory	n/a	60	— ^a	— ^a	107	— ^a	— ^a	0	— ^a	— ^a	93	— ^a	— ^a	31	— ^a	6,485
Scenario 2: Hard-to-drive	9.5 m diameter monopile (1 pile per day)	Impact	4,000 kJ	99	128	3,363	— ^a	26	108	— ^a	607	1,888	— ^a	138	1,171	— ^a	5,503	— ^a
		Vibratory	n/a	30	— ^a	— ^a	88	— ^a	— ^a	0	— ^a	— ^a	67	— ^a	— ^a	21	— ^a	6,485
Scenario 3: One stand and	9.5 m diameter monopile (2	Impact	4,000 kJ	184	128	4,152	— ^a	26	134	— ^a	607	2,314	— ^a	138	1,464	— ^a	5,503	— ^a
		Vibratory	n/a	90	— ^a	— ^a	135	— ^a	— ^a	0	— ^a	— ^a	110	— ^a	— ^a	36	— ^a	6,485

Foundation Installation Parameters					Distance to Marine Mammal Threshold (m)													
					Level A Harassment (PTS)													Level B Harassment (Behavioral)
					LFC			MFC			HFC			PP			All species	
one hard-to-drive	piles per day)																	

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds; L_p = root-mean square sound pressure (dB re 1 μ Pa); L_E = sound exposure level (dB re 1 μ Pa² · s); $L_{p,pk}$ = peak sound pressure (dB re 1 μ Pa)
a – Dashes (–) indicate a value that was not calculated by Tetra Tech during the acoustic modeling analysis given the thresholds do not apply (e.g., distances to the peak impulsive threshold was not calculated for vibratory driving).

Table 8 – Acoustic Ranges ($R_{95\%}$), In Meters, To Level A Harassment (PTS) and Level B Harassment Thresholds For The Shallow OSS Location For Marine Mammal Function Hearing Groups, Assuming An Average Sound Speed Profile and 10 dB of Sound Attenuation

Foundation Installation Parameters					Distance to Marine Mammal Thresholds (m)													
					Level A Harassment (PTS)													Level B Harassment (Behavioral)
					LFC			MFC			HFC			PP			All species	
Installation Scenario	Pile Installed	Installation Approach	Maximum Hammer Energy	Installation duration (minutes)	219 $L_{p, pk}$	183 L_E , 24hr	199 L_E , 24hr	230 $L_{p, pk}$	185 L_E , 24hr	198 L_E , 24hr	202 $L_{p, pk}$	155 L_E , 24hr	173 L_E , 24hr	218 $L_{p, pk}$	185 L_E , 24hr	201 L_E , 24hr	160 L_p	120 L_p
Scenario 4: OSS jacket foundation	2.8 m diameter pin pile	Impact	3,000 kJ	410	0	2,680	— ^a	0	48	— ^a	197	1,435	— ^a	0	1,283	— ^a	2,172	— ^a
		Vibratory	n/a	120	— ^a	— ^a	75	— ^a	— ^a	0	— ^a	— ^a	68	— ^a	— ^a	0	— ^a	3,601

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds; L_p = root-mean square sound pressure (dB re 1 μ Pa); L_E = sound exposure level (dB re 1 μ Pa² · s); $L_{p, pk}$ = peak sound pressure (dB re 1 μ Pa)

^a – Dashes (—) indicate a value that was not calculated by Tetra Tech during the acoustic modeling analysis given the thresholds do not apply (e.g., distances to the peak impulsive threshold was not calculated for vibratory driving).

Dominion Energy provided seasonal density estimates during the time of year when WTG and OSS foundations

would be installed following the methodology provided in the *Density and Occurrence* section above. The

resulting densities used in the exposure estimate calculations for foundation installation are provided in Table 9.

TABLE 9—MEAN SEASONAL DENSITY ESTIMATES FOR WTG AND OSS FOUNDATION INSTALLATION
[Inclusive of the 8.9 Km perimeter applied for the largest Level B harassment zone from vibratory pile driving]

Marine mammal species	Stock	Mean density (individual/km ²)			
		Spring (May)	Summer (June to August)	Fall (September to October) ^c	Annual density
North Atlantic right whale *	Western North Atlantic	0.00015	0.00004	0.00005	.....
Fin whale *	Western North Atlantic	0.00069	0.00036	0.00019	.....
Humpback whale	Gulf of Maine	0.00136	0.00023	0.00040	.....
Minke whale	Canadian East Coast	0.00519	0.00028	0.00011	.....
Sei whale *	Nova Scotia	0.00021	0.00001	0.00004	.....
Sperm whale *	North Atlantic	0.00003	0.00000	0.00000	.....
Pygmy sperm whale	Western North Atlantic	^a n/a	^a n/a	^a n/a	.....
Atlantic spotted dolphin	Western North Atlantic	0.00507	0.05873	0.03822	.....
Atlantic white-sided dolphin	Western North Atlantic	^a n/a	^a n/a	^a n/a	.....
Bottlenose dolphin ^d	Southern Migratory Coastal	0.13098	0.13509	0.13852	.....
.....	Western North Atlantic, Offshore	0.07352	0.07415	0.06439	.....
Clymene dolphin	Western North Atlantic	^a n/a	^a n/a	^a n/a	.....
Common dolphin	Western North Atlantic	0.05355	0.00559	0.00103	.....
False killer whale	Western North Atlantic	^a n/a	^a n/a	^a n/a	.....
Melon-headed whale	Western North Atlantic	^a n/a	^a n/a	^a n/a	.....
Long-finned pilot whale ^e	Western North Atlantic	(^b)	(^b)	(^b)	0.00098
Short-finned pilot whale ^e	Western North Atlantic	(^b)	(^b)	(^b)	0.00098
Pantropical spotted dolphin	Western North Atlantic	(^b)	(^b)	(^b)	0.00008
Risso's dolphin	Western North Atlantic	0.00084	0.00042	0.00021	.....
Harbor porpoise	Western North Atlantic	0.00315	0.00000	0.00000	.....
Gray seal	Western North Atlantic	0.01828	0.00001	0.00047	.....
Harbor seal	Western North Atlantic	0.01828	0.00001	0.00047	.....

Note: * denotes species listed under the Endangered Species Act.

^a These species were added to the list of marine mammal species that could potentially be harassed by project activities after the animal analysis was completed so no exposure estimates were calculated. Instead, a standard group size of animals was used instead for any analysis pertaining to this species.

^b For these species, monthly densities were not available. Instead, annual densities were used.

^c As no foundation installation is planned to occur in November or December, the relevant values were not included.

^d Within the Roberts et al. (2023) data, bottlenose dolphin densities are reported as a single "bottlenose dolphin" group and are not identified by stock. Given that the WTG and OSS foundation installation would be occurring beyond the 20-m isobath, where the stocks are split, estimated take was assumed to come from the off-shore stock.

^e Pilot whale spp. are reported as a single group (*Globicephala* spp.) and are not species-specific. Because of this, Dominion Energy assumed that the density was a collective pilot whale group and could be attributed to either the short-finned or long-finned species.

MAI set the modeled marine mammal animats to populate each of the model areas with the representative nominal densities provided. During the modeling, some of the obtained densities were higher than the real-world density, as to ensure that the results of the animat model simulations were not unduly influenced by the spontaneous placement of some of the simulated marine mammals and to provide additional statistical robustness within the modeling exercise. To obtain the final exposure estimates, the modeled results were normalized by the ratio of the modeled animat density to the real-world seasonal densities. The exposure estimates were derived based on the history of exposure within the modeling exercise for each marine mammal species or species group. The modeled SEL received by each animat over the duration of the construction activity period (e.g., estimated 3 hours of driving on a single monopile) and the peak sound pressure level were used to calculate the potential for an individual animat to have experienced PTS, in accordance with the NOAA Fisheries (2018) physiological acoustic thresholds

for marine mammals. If an animat was not predicted to have experienced PTS, then the sound energy received by each individual animat over the 24-hour modeled period was used to assess the potential risk of biologically significant behavioral reactions. The modeled RMS sound pressure levels were used to estimate the potential for behavioral responses, in accordance with the NOAA Fisheries (2005b) behavioral criteria.

For the monopile WTG installation, the exposure calculations assumed 176 WTG monopiles would be installed over 2 years, but also took into account the need for Dominion Energy to possibly re-pile for up to 7 WTG foundations (equating to a total of 183 modeled piling events for WTGs). For the jacket foundations using pin piles for the OSSs, the modeling assumed that up to 12 pin piles (4 per OSS for up to 3 total OSSs) would be installed over 2 years. Both of these were modeled in accordance with the schedule provided by Dominion Energy.

Overall, for Year 1 (2024), it was assumed that up to a maximum of 95 monopiles and all 12 pin piles would be

installed. For Year 2, it was assumed that a maximum of 88 monopiles (which does account for the 7 possible re-piling events that may be necessary) would be installed. As construction of the WTGs and OSSs are only anticipated to occur in the first 2 years of the project (2024 and 2025), animats were only calculated for these. Although schedule delays due to weather or other unforeseen activities may require Dominion Energy to not complete all piling in Year 2, but instead push a limited number of piles to Year 3 (2026) and/or Year 4 (2027), no modeling was completed for 2026 or 2027. This is because any piles not completed in 2025 (Year 2) would be pushed to 2026 (Year 3) and/or 2027 (Year 4), which means that the current analysis has accounted for the total scenario for foundation installation activities in Year 2 would be less than estimated here and instead would shift some to Years 3 or 4. Please see Table 10 for the derived exposure estimates during WTG and OSS foundation installation over 2 years (2024 and 2025).

The exposure estimates for both the installation of WTGs and OSSs over 2

years (2024 and 2025) were then adjusted, for some species, based on group size characteristics known through the scientific literature and received sighting reports from previous projects and/or surveys. As indicated below, when density-based exposure estimates were lower than numbers that were found in the scientific literature or via real-world sighting reports, these estimates were adjusted by either a standard group size for the species/stock or by PSO observational data. The species-specific requested and authorized take estimates are listed below, in accounting for these adjustments, where applicable:

- *North Atlantic right whale*: Take by Level B harassment for foundation installation adjusted for group size of one individual for months with monthly density <0.01 per 100 km² (Roberts *et al.*, 2023) when construction may occur (May–October) and two individuals for months with monthly density >0.01 when construction may occur (May–October);

- *Fin whale*: Adjusted based on PSO data (max daily number × days of activity);

- *Humpback whale*: Adjusted based on PSO data (max daily number × days of activity);

- *Sperm whale*: Adjusted based on one group size per year (three per Barkaszi *et al.*, 2019);

- *Atlantic white-sided dolphin*: Adjusted based on 1 group size per year (15 per Reeves *et al.*, 2002);

- *Pantropical spotted dolphin*: Adjusted based on 1 group size per year (20 per Reeves *et al.*, 2002);

- *Short-beaked common dolphin*: Adjusted based on 1 group size (20 individuals per group) per day (Dominion Energy, 2021);

- *Clymene dolphin*: Adjusted based on one group size (five per AIS, Inc. (2020));

- *False killer whale*: Adjusted based on one group size per year (four per RPS (2021));

- *Melon-headed whale*: Adjusted based on one group size per year (five per RPS (2018)); and

- *Pygmy sperm whale*: Adjusted based on one group size per year (one per RPS (2021)).

In Table 10, we present the calculated exposure estimates and the maximum amount of take authorized during foundation installation of WTGs and OSSs during the 5-year effective period for the CVOW–C Project. As demonstrated by the exposure modeling results, which do not consider

mitigation other than the use of a sound attenuation device(s), the potential for Level A harassment is very low.

However, there may be some situations where pile driving cannot be stopped due to safety concerns related to pile instability.

As previously discussed, only 176 WTG and 3 OSS (using a maximum of 12 pin piles) foundations would be permanently installed for the CVOW–C Project; however, Dominion Energy has considered the possibility that some piles may be started but not fully installed at some locations due to installation feasibility issues.

Conservatively, Dominion Energy has estimated up to seven additional pile driving events may be needed in the event this occurs. Per Dominion Energy's estimated construction schedule, it is anticipated that all of these foundation installation activities would occur in Year 1 (2024) and Year 2 (2025); therefore, the take estimates below reflect the foundation pile driving activities associated with 183 WTG foundations and 3 OSSs, to account for the 7 additional re-piling events that may occur if monopiles were started in one location but then needed to be re-driven at another WTG position.

TABLE 10—EXPOSURES ESTIMATES AND MAXIMUM AMOUNT OF TAKE AUTHORIZED BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FROM VIBRATORY AND IMPACT PILE DRIVING ASSOCIATED WITH 183 WTG^f AND 3 OSS TOTAL INSTALLATION EVENTS, ASSUMING 10 dB OF NOISE ATTENUATION

Marine mammal species	Stock	Estimated exposures				Takes authorized			
		2024		2025		2024		2025 ^e	
		Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale ^{*c}	Western North Atlantic	0	3	0	2	0	6	0	6
Fin whale [*]	Western North Atlantic	4	21	3	19	4	112	3	90
Humpback whale	Gulf of Maine	4	18	4	14	4	29	4	104
Minke whale	Canadian East Coast	8	53	7	48	8	53	7	48
Sei whale [*]	Nova Scotia	1	3	1	2	1	3	1	2
Sperm whale [*]	North Atlantic	0	1	0	1	0	3	0	3
Pygmy sperm whale ^g	Western North Atlantic	a n/a	a n/a	a n/a	a n/a	0	1	0	1
Atlantic spotted dolphin	Western North Atlantic	0	2,108	0	1,896	0	2,108	0	1,896
Atlantic white-sided dolphin ^d	Western North Atlantic	h n/a	h n/a	h n/a	h n/a	0	15	0	15
Bottlenose dolphin ^a	Southern Migratory Coastal	0	0	0	0	0	0	0	0
	Western North Atlantic, Off-shore.	0	4,290	0	3,602	0	4,290	0	3,602
Clymene dolphin ^g	Western North Atlantic	h n/a	h n/a	h n/a	h n/a	0	5	0	5
Common dolphin	Western North Atlantic	0	594	0	559	0	1,720	0	1,380
False killer whale ^g	Western North Atlantic	h n/a	h n/a	h n/a	h n/a	0	4	0	4
Melon-headed whale ^g	Western North Atlantic	h n/a	h n/a	h n/a	h n/a	0	5	0	5
Pilot whale spp.	Western North Atlantic	0	61	0	50	0	61	0	50
Pantropical spotted dolphin	Western North Atlantic	0	4	0	4	0	20	0	20
Risso's dolphin	Western North Atlantic	0	25	0	23	0	25	0	23
Harbor porpoise	Western North Atlantic	1	23	1	20	1	23	1	20
Gray seal ^b	Western North Atlantic	1	62	1	53	1	62	1	53
Harbor seal ^b	Western North Atlantic	1	62	1	53	1	62	1	53

Note: * denotes species listed under the Endangered Species Act.

^a Given foundation installation would be confined to an area beyond the 20-m isobath, all of the estimated take has been allocated to the offshore stock.

^b The take request for pinnipeds was allocated to an even 50 percent split to each harbor seal and gray seal.

^c Although Level A harassment exposure estimates were calculated for North Atlantic right whales, Dominion Energy has not requested, nor does NMFS propose to authorize, any take by Level A harassment for this species as the enhanced mitigation measures would reduce these to zero.

^d Atlantic white-sided dolphins are not expected, but due to shifts in habitat use, have been included in the take request based on a standard group size annually. We note that animal/exposure modeling was not done for this species.

^e In the event that the construction schedule is delayed in 2025, some WTGs may need to be constructed in 2026 and/or 2027 instead, which would reduce the number of WTGs constructed in 2025 but it would not change the maximum number of takes of marine mammals authorized in this rule. Instead, the values shown here for 2025 would be reduced with the remaining take carried over into 2026 and/or 2027.

^f This analysis conservatively assumes 183 independent piling events for WTG monopile foundations would occur, although only 176 permanent WTGs would be installed.

^g While these species were not originally included in Dominion Energy's request, given recorded sightings/detections of these species during previous Dominion Energy IHAs in the same general area, NMFS has included these as species that may be harassed (by Level B harassment only) during the 5-year effective period of this rulemaking.

^h This species was incorporated after the animal analysis was completed so no take was estimated. Instead, a standard group size of animals was used instead for any analysis pertaining to this species.

Additionally, as previously discussed above in the Description of the Specified Activities section, Dominion Energy's construction schedule may shift during the project due to bad weather or other uncontrollable and unforeseen events, which may require foundation installation to shift and occur in 2026 and/or 2027 instead. However, in this situation, the maximum amount of take authorized would not change; instead, some of the take that would have occurred in 2025 would instead occur in 2026 and/or 2027, which means that the take of marine mammals during 2025 would be

less than predicted here, as those takes would be shifted into 2026 and/or 2027.

Cable Landfall Construction

Dominion Energy plans to install and remove both temporary goal posts comprised of steel pipe piles (to guide the placement of casing pipes installed using a trenchless installation method that does not produce noise levels with the potential to result in marine mammal harassment) and temporary cofferdams comprised of steel sheet piles at cable landfall locations.

Temporary Cofferdams

Dominion Energy would install and remove up to nine temporary

cofferdams adjacent to the firing range at the State Military Reservation in Virginia Beach using a vibratory hammer. Dominion Energy assumed that a maximum of 6 days would be needed to install and remove a single cofferdam (3 days to install and 3 days to remove). Vibratory pile driving would occur for up to 60 minutes per day (1 hour) and up to 20 sheet piles could be installed per day (each cofferdam would necessitate 30 to 40 sheet piles, depending on the final chosen configuration). Table 11 includes details for the cofferdam scenario.

TABLE 11—TEMPORARY COFFERDAM SCENARIO

Installation scenario	Foundation installed	Installation details	Sound source level (dB re: 1 μ Pa at 1 m)	Duration of installation activity for a single pile
Cofferdam Installation	Sheet piles	Vibratory pile driving	195 SEL RMS	60 minutes.

Underwater noise associated with the construction of temporary cofferdams would only result from vibratory pile driving of steel sheet piles. As already described previously, Dominion Energy employed Tetra Tech to conduct the acoustic modeling to better understand the sound fields produced during these activities. These results also utilized information provided by iTAP (see Remmers and Bellmann (2021) Attachment Z–3 in Appendix A of Dominion Energy's application).

Following a similar approach to the one described for foundation

installation, Tetra Tech calculated the ranges to the defined acoustic thresholds using a maximum received level-over-depth approach where the maximum received sound level that occurs within the water column at each sampling point was used. Tetra Tech calculated both the R_{max} and the $R_{95\%}$ for each of the marine mammal regulatory thresholds. The results of this analysis are presented below in Table 12 and are presented in terms of the $R_{95\%}$ range, based on the cofferdam modeling scenario found in Table 11 above. Given the nature of vibratory pile driving and

the very small distances to Level A harassment thresholds (0–108 m (0–354 ft); assuming 10 dB of sound attenuation), which accounts for 1 hour of vibratory pile driving per day, vibratory driving is not expected to result in Level A harassment. As Dominion Energy did not request any Level A harassment incidental to the installation and/or removal of sheet piles for temporary cofferdams, and based on these small distances, NMFS is not authorizing any in this action.

TABLE 12—ACOUSTIC RANGES ($R_{95\%}$), IN METERS, TO LEVEL A HARASSMENT (PTS) AND LEVEL B HARASSMENT THRESHOLDS FROM VIBRATORY PILE DRIVING DURING SHEET PILE INSTALLATION FOR MARINE MAMMAL FUNCTION HEARING GROUPS, ASSUMING AN AVERAGE SOUND SPEED PROFILE

Activity	Pile parameters	Approach used	Distance to marine mammal thresholds				
			Level A harassment (PTS)				Level B harassment (behavior)
			LFC (199 SEL)	MFC (198 SEL)	HFC (173 SEL)	PP (201 SEL)	All species (120 SPL RMS)
Temporary Cofferdams.	2.8 m diameter Pin pile.	Vibratory Pile Driving.	108	0	0	0	3,097

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds.

dBSea was used to derive the acoustic ranges to the Level B harassment threshold, assuming no sound attenuation, around the cable landfall site. This included the ensonified area that was truncated by any land, which yielded an area (approximately 1 km²) smaller than the radius of a circle (assuming 3,097 m). For the vibratory pile driving for temporary cofferdams associated with the sheet pile installation and removal, the daily ensonified area was 29.04 km² (11.21 mi²), based on the acoustic range to the Level B harassment threshold (3,097 m), with a total ensonified area of 4,980 km²

(1,922.8 mi²) over 54 days of installation.

Density data from Roberts *et al.* (2023) were mapped within the boundary of the CVOW-C Project Area using geographic information system (GIS) software (ESRI, 2017). To estimate marine mammal density around the temporary cofferdams, the greatest ensonified area was intersected with the density grid cells for each individual species to select all of those grid cells that the ensonified area intersects, representing the furthest extent where potential impacts to marine mammals could be expected. Maximum monthly

densities (*i.e.*, the maximum density found in each grid cell) were averaged by season (spring (May), summer (June through August), and fall (September through October)). Since the timing of landfall construction activities may vary somewhat from the prepared schedule, the highest average seasonal density from May through October (Dominion Energy's planned construction period for temporary cofferdams) for each species was selected and used to estimate exposures from temporary cofferdam installation and removal (Table 13).

TABLE 13—HIGHEST AVERAGE SEASONAL MARINE MAMMAL DENSITIES FOR NEARSHORE TRENCHLESS INSTALLATION (TEMPORARY COFFERDAM AND TEMPORARY GOAL POST INSTALLATION) ACTIVITIES

Marine mammal species	Stock	Highest average seasonal density (individual/100 km ²)
North Atlantic right whale *	Western North Atlantic	0.024
Fin whale *	Western North Atlantic	0.041
Humpback whale	Gulf of Maine	0.054
Minke whale	Canadian East Coast	0.124
Sei whale *	Nova Scotia	0.015
Sperm whale *	North Atlantic	0.001
Pygmy sperm whale	Western North Atlantic	^a n/a
Atlantic spotted dolphin	Western North Atlantic	2.370
Atlantic white-sided dolphin	Western North Atlantic	0.325
Bottlenose dolphin	Southern Migratory Coastal	17.054
Clymene dolphin	Western North Atlantic	^a n/a
Common dolphin	Western North Atlantic	1.808
False killer whale	Western North Atlantic	^a n/a
Melon-headed whale	Western North Atlantic	^a n/a
Pilot whale <i>spp.</i>	Western North Atlantic	0.065
Pantropical spotted dolphin	Western North Atlantic	0.007
Risso's dolphin	Western North Atlantic	0.030
Harbor porpoise	Western North Atlantic	0.438
Gray seal	Western North Atlantic	1.775
Harbor seal	Western North Atlantic	1.775

Note: * denotes species listed under the Endangered Species Act.

^a These species were added to the list of species that could be potentially impacted by the project after the adequate and complete date. However, given the rare occurrence of these species in the Project Area, authorized take was included only for foundation installation, and not for nearshore cable landfall activities.

For some species where little density information is available (*i.e.*, pilot whales), the annual density was used instead. Given overlap with the pinniped density models as the Roberts *et al.* (2023) dataset does not distinguish between some species, a collective “pinniped” density was used for both harbor and gray seal species and later split for the take estimates and request (Roberts *et al.*, 2016). This approach was the same as described in the *WTG and OSS Foundation Installation* section. Refer back to Table 13 for the densities used for temporary cofferdam installation and removal.

Given that use of the vibratory hammer during cofferdam installation and removal may occur on up to 6 days per cofferdam (3 days for installation and 3 days for removal), a max total of

54 days was assumed necessary for all 9 cofferdams. To calculate exposures, the highest average seasonal marine mammal densities were multiplied by the daily ensonified area (29.04 km²) for installation and removal of sheet piles for temporary cofferdams. To yield the total estimated take for the activity, the per day take was multiplied by the ensonified area by the total number of days for the activity. To do this, the ensonified area was overlaid over the Roberts *et al.* (2023) densities to come up with a per day take which was then multiplied by 54 to account for the total number of days. This produced the results shown in Table 14. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the work.

Given the small distances to the Level A harassment isopleths, Level A harassment incidental to this activity is not anticipated, even absent mitigation. Therefore, Dominion Energy did not request, and NMFS is not authorizing, Level A harassment related to cofferdam installation and removal.

Calculated take estimates for temporary cofferdams were then adjusted, for some species, based on group size characteristics known through the scientific literature and received sighting reports from previous projects and/or surveys. These group size estimates for cofferdam installation and removal are described below and were incorporated into the estimated take to yield the requested and authorized take estimate:

• *Atlantic spotted dolphin*: Adjusted based on 1 group size per day (20 per Dominion Energy, 2020, Jefferson *et al.*, 2015);

• *Bottlenose dolphin (Combined Southern Migratory Coastal, Western North Atlantic Offshore)*: Adjusted based on 1 group size per day (15 per Jefferson *et al.*, 2015); and

• *Common dolphin (short-beaked)*: Adjusted based on 1 group size per day (20 per Dominion Energy, 2021).

Given that take by Level B harassment is precautionarily authorized, assuming 2 years of foundation installation, for Clymene dolphins, false killer whales, melon-headed whales, and pygmy sperm whales, and given the nearshore nature of cable landfall activities, no additional takes (and therefore, no group size adjustments) have been authorized for temporary cofferdam installation and removal activities.

Additionally, beyond group size adjustments, some slight modifications were performed for some species, including for harbor seals, gray seals, short- and long-finned pilot whales, and bottlenose dolphins. More specifically, the takes requested were accrued based on a 50/50 split for both pinniped species, as the Roberts *et al.* (2023) data does not differentiate the density by specific pinniped species. The density for pilot whales represents a single group (*Globicephala spp.*) and is not

species-specific. Due to the minimal occurrence of both short-finned and long-finned pilot whales to occur in this area due to the shallow water, the requested take was allocated to a collective group, although short-finned pilot whales are more commonly seen in southern waters. Bottlenose dolphin stocks were split by the 20-m isobath cutoff, and then allocated specifically to the coastal stock of bottlenose dolphins (migratory southern coastal) due to the nearshore nature of these activities.

Below we present the estimated take and maximum amount of take authorized during temporary cofferdam installation and removal during the 5-year effective period for the CVOW-C Project (Table 14). Take by Level A harassment was not requested by Dominion Energy, and it is neither expected nor authorized by NMFS. The take authorized accounts for three days for installation and 3 days for removal, for a total of 6 days for each of 9 cofferdams (54 days total). To be conservative, Dominion Energy has requested take, by Level B harassment, based on the highest exposures predicted by the density-based take estimates, with some slight modifications to account for group sizes for some species.

Although North Atlantic right whales do migrate in coastal waters and have been seen off Virginia Beach, Virginia,

they are not expected to occur in the nearshore waters where work will be occurring. The amount of work considered here is limited and would be conducted during a time when North Atlantic right whales are less likely to be migrating in this area. The distance to the Level B harassment isopleth (3.1 km) for installation and removal of the sheet piles associated with the cofferdams and the maximum distance to the Level A isopleth (0.11 km) remain in shallow waters in the nearshore environment and for a very short period of time (approximately 1 hour daily); thus, it is unlikely that right whales (or most species of marine mammals considered here) would be exposed to vibratory pile driving during cofferdam installation and removal at levels close to the 120 dB Level B harassment threshold or to the Level A harassment thresholds. Hence, Dominion Energy did not request take of North Atlantic right whales incidental to this activity and NMFS is not authorizing it.

We note that these would be the maximum number of animals that may be harassed during vibratory pile driving for nearshore temporary cofferdams as the analysis conservatively assumes each exposure is a different animal. This is unlikely to be the case for all species shown here but is the most comprehensive assessment of the level of impact from this activity.

TABLE 14—DENSITY-BASED EXPOSURES AND AUTHORIZED TAKE BY LEVEL B HARASSMENT FROM VIBRATORY PILE DRIVING ASSOCIATED WITH TEMPORARY COFFERDAM INSTALLATION AND REMOVAL

Marine mammal species	Stock	Density-based exposures	Authorized takes of marine mammals
Level B harassment			
North Atlantic right whale *	Western North Atlantic	0.376	0
Fin whale *	Western North Atlantic	0.643	1
Humpback whale	Gulf of Maine	0.847	1
Minke whale	Canadian East Coast	1.945	2
Sei whale *	Nova Scotia	0.235	0
Sperm whale *	North Atlantic	0.016	0
Pygmy sperm whale	Western North Atlantic	^d n/a	^d n/a
Atlantic spotted dolphin	Western North Atlantic	37.169	240
Atlantic white-sided dolphin ^c	Western North Atlantic	5.097	5
Bottlenose dolphin	Southern Migratory Coastal	267.462	180
	Western North Atlantic, Offshore	^a n/a	^a n/a
Clymene dolphin	Western North Atlantic	^d n/a	^d n/a
Common dolphin	Western North Atlantic	28.355	240
False killer whale	Western North Atlantic	^d n/a	^d n/a
Melon-headed whale	Western North Atlantic	^d n/a	^d n/a
Pilot whale <i>spp</i>	Western North Atlantic	1.019	1
Pantropical spotted dolphin	Western North Atlantic	0.110	0
Risso's dolphin	Western North Atlantic	0.470	0
Harbor porpoise	Western North Atlantic	6.869	7
Gray seal ^b	Western North Atlantic	13.919	14
Harbor seal ^b	Western North Atlantic	13.919	14

Note: * denotes species listed under the Endangered Species Act.

^a Given cofferdam installation and removal would be confined to an area below the 20-m isobath, all of the estimated take has been allocated to the coastal stock.

^b The take request for pinnipeds was allocated to an even 50 percent split to each harbor seal and gray seal.

^c Atlantic white-sided dolphins are not expected, but due to shifts in habitat use, have been included in the take request based on a standard group size annually. We note that animal/exposure modeling was not done for this species.

^d Given take by Level B harassment was precautionarily authorized during 2 years of foundation installation for these species, no take has been calculated for cable landfall construction activities.

Temporary Goal Posts

To facilitate nearshore, trenchless installation for the export cables to shore, Direct Steerable Pipe Tunneling equipment utilizing a steerable tunnel boring machine would excavate ground while goal posts are used to guide steel casing pipes behind the tunnel boring machine using a pipe thruster. For tunneling and boring activities, only the impact hammer is expected to cause harassment to marine mammals; all other equipment (*i.e.*, pipe thrusting machine, pumps, motors, powerpacks, and drill mud processing system) produces lower source levels. The pipe thrusting machine does not vibrate or produce any noise as it only pushes the casing pipes so no harassment to marine mammals is expected to occur from the use of this equipment. Each temporary goal post, which would be installed via impact pile driving, would consist of 1.07 m (42 in) diameter steel pipe piles. Up to two steel pipes could be installed per day for a total duration of 130 minutes per goal post. The strike rate would require approximately 260 strikes per pile with a strike duration between 0.5 and 2 seconds. Up to 12 goal posts would be needed for each of the 9 Direct Pipe (temporary cofferdam) locations, equating to a total of 108 piles necessary for the goal posts. Removal of the pipe piles would occur at a rate of 2 per day over 54 days to remove all 108 piles. Unlike installation, removal of pipe

piles is not expected to cause take of marine mammals as mechanical and/or hydraulic equipment is used that does not produce noise. Because of this, the analysis described below only pertains to the installation of goal posts.

Tetra Tech applied the Level A harassment cumulative PTS criteria to a specific tab (for impact pile driving) spreadsheet (User Spreadsheet) that reflects NOAA Fisheries' 2018 Revisions to Technical Guidance (NOAA Fisheries, 2018a). The User Spreadsheet relies on overriding default values, calculating individual adjustment factors, and using the difference between levels with and without weighting functions for each of the five categories of hearing groups. The new adjustment factors in the spreadsheets allow for the calculation of SEL_{cum} distances and peak sound exposure (PK) distances and account for the accumulation (Safe Distance Methodology) using the source characteristics (duty cycle and speed) after Silve *et al.* (2014).

To calculate the distance to the acoustic threshold for Level B harassment of marine mammals, Tetra Tech utilizing a spread calculation to estimate the horizontal distance to the 160 dB re 1 µPa isopleth:

$$SPL(r) = SL - PL(r)$$

Where:

SPL = sound pressure level (dB re 1 µPa);

r = range (m), SL = source level (dB re 1 µPa m); and

PL = propagation loss as a function of distance (calculated as $20\log_{10}(r)$).

We note that while these methodologies provided by NOAA Fisheries are able to calculate the maximum distances to the Level A harassment and Level B harassment thresholds, these calculations do not allow for the inclusion of site-specific environmental parameters, as was described for activities analyzed through dBSea.

The results of this analysis are presented below in Table 15 and are presented in terms of the R_{95%} range. Table 15 demonstrates the maximum distances to both the regulatory thresholds for Level A harassment and Level B harassment for each marine mammal hearing group. Given the very small distances to the Level A harassment thresholds (4.5–152 m; assuming 10 dB of sound attenuation), which accounts for 130 minutes (approximately 2.2 hours) of impact pile driving per day, impact driving is not expected to result in Level A harassment. As Dominion Energy did not request any Level A harassment incidental to the installation and/or removal of steel pipe piles for temporary goal posts, and based on these small distances, NMFS is not authorizing any in this action.

TABLE 15—RANGES, IN METERS, TO LEVEL A HARASSMENT (PTS) AND LEVEL B HARASSMENT THRESHOLDS FROM IMPACT PILE DRIVING DURING STEEL PIPE PILE INSTALLATION OF GOAL POSTS FOR MARINE MAMMAL FUNCTION HEARING GROUPS

Activity	Pile parameters	Approach used	Distance to marine mammal thresholds (in meters)				
			Level A harassment (PTS onset)				Level B harassment (behavioral)
			LFC (183 dB SEL _{cum})	MFC (185 dB SEL _{cum})	HFC (155 dB SEL _{cum})	PP (185 dB SEL _{cum})	All (160 dB RMS)
Temporary Goal Posts.	1.07 m diameter Steel Pipe Piles.	Impact Pile Driving.	590.9	21.0	703.8	316.2	1,450

Note: LFC = low-frequency cetaceans; MFC = mid-frequency cetaceans; HFC = high-frequency cetaceans; PP = phocid pinnipeds.

Given the small distances to Level A harassment isopleths, Level A harassment incidental to this activity is not anticipated, even absent mitigation. Therefore, Dominion Energy is not requesting, and NMFS is not authorizing Level A harassment related to goal post installation. The acoustic ranges to the Level B harassment threshold, assuming

no sound attenuation, were used to calculate the ensonified area around the cable landfall site. The Ensonified Area is calculated as the following:

$$\text{Ensonified Area} = \pi \chi r^2,$$

Where:

r is the linear acoustic range distance from the source to the isopleth to the Level B harassment thresholds.

To accurately account for the greatest level of impact (via behavioral harassment) to marine mammals, Tetra Tech applied the evaluated maximum Level B harassment distance (1,450 m) as the basis for determining potential takes. To get an accurate value of the total ensonified area within the aquatic environment, the isopleth was overlaid

on a map to determine if any truncation by land would occur due to the nearshore proximity of the goal posts. For the vibratory pile driving for temporary cofferdams associated with the sheet pile installation and removal, it was assumed that the daily ensonified area was 4.98 km² (1.92 mi²), or a total ensonified area of 268.92 km² (103.83 mi²) over 54 days of installation and removal. The daily ensonified area that resulted from this analysis (4.98 km²) was carried forward into the take estimates as the daily ensonified area.

In the same approach as was undertaken by the temporary cofferdams, the greatest ensonified area was intersected with the density grid cells for each individual species to select all of those grid cells that the ensonified area intersects to estimate the marine mammal density relevant to the temporary goal posts. Maximum monthly densities (*i.e.*, the maximum density found in each grid cell) were averaged by season. Since the timing of landfall construction activities may vary somewhat from the prepared schedule, the highest average seasonal density from May through October (Dominion Energy's planned construction period for temporary goal posts) for each species was selected and used to estimate exposures from temporary goal post installation. For some species where little density information is available (*i.e.*, pilot whale *spp.*, pantropical spotted dolphins), the annual density was used instead. Given overlap with the pinniped density models as the Roberts *et al.* (2023) dataset does not distinguish between some species, a collective "pinniped" density was used for both harbor and gray seal species and later split for the take estimates and request (Roberts *et al.*, 2016). This approach was the same as described in the temporary cofferdams. Furthermore, given the densities are the same as what was calculated for temporary cofferdams, we refer the reader back to Table 13 above.

To calculate exposures, the highest average seasonal marine mammal

densities from Table 16 were multiplied by the daily ensonified area (4.98 km²) for installation and removal of steel pipe piles for temporary goal posts. Given that use of the impact hammer during goal post installation may occur at a rate of 2 pipe piles per day for a total of 54 days (based on 108 total steel pipe piles), the daily estimated take was multiplied by 54 to produce the results shown in Table 16. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the work. Again, as previously noted, no take was calculated for the removal of goal posts due to the equipment planned for use.

The take estimates for Level B harassment related to temporary goal post installation were then adjusted, for some species, based on group size characteristics known through the scientific literature and received sighting reports from previous projects and/or surveys. These group size estimates for temporary goal post installation are described below and were incorporated into the estimated take to yield the requested and authorized take estimate:

- *Atlantic spotted dolphin*: Adjusted based on 1 group size per day (20 per Dominion Energy, 2020; Jefferson *et al.*, 2015);
- *Bottlenose dolphin (Southern Migratory Coastal Stock)*: Adjusted based on 1 group size per day (15 per Jefferson *et al.*, 2015); and
- *Short-beaked common dolphin*: Adjusted based on 1 group size per day (20 per Dominion Energy, 2021).

Take by Level B harassment is authorized as a precaution assuming 2 years of foundation installation, for Clymene dolphins, false killer whales, melon-headed whales, and pygmy sperm whales. Given the nearshore nature of cable landfall activities, no additional take (and therefore, no group size adjustments) has been authorized for temporary goal post installation and removal activities.

Additionally, beyond group size adjustments, some slight modifications

were performed for some species, including harbor seals, gray seals, short- and long-finned pilot whales, and bottlenose dolphins. More specifically, the takes requested were accrued based on a 50/50 split for both pinniped species, as the Roberts *et al.* (2023) data does not differentiate the density by specific pinniped species. The density for pilot whales represents a single group (*Globicephala spp.*) and is not species-specific. Due to the occurrence of both short-finned and long-finned pilot whales in this area, the requested take was allocated to a collective group, although short-finned pilot whales are commonly seen in southern waters. Bottlenose dolphin stocks were split by the 20-m isobath cutoff, and then allocated specifically to the coastal stock of bottlenose dolphins (migratory southern coastal) due to the nearshore nature of these activities. Lastly, due to the size of the Level B harassment isopleth (1,450 m), Dominion Energy has planned a 1,500 m (1,640.4 ft) shutdown zone to exceed this distance. However, given the proximity to land, large whales are not anticipated to occur this close to nearshore activities. Because of the required mitigation zone and the nearshore location of the temporary goal posts, as well as the calculated exposures, which were less than 0.5, Dominion Energy has not requested, and NMFS has not authorized, takes for large whales (*i.e.*, mysticetes and sperm whales).

Below we present the estimated take and maximum amount of take authorized during temporary goal post installation during the 5-year effective period for the CVOW-C Project (Table 16). Take by Level A harassment was not requested by Dominion Energy, and it is not expected or authorized by NMFS. These authorized take estimates take into account 54 days total for temporary goal post activities, including installation and removal, at a rate of 2 steel pipe piles installed per day over 130 minutes.

TABLE 16—DENSITY-BASED EXPOSURES AND AUTHORIZED TAKE BY LEVEL B HARASSMENT FROM IMPACT PILE DRIVING ASSOCIATED WITH TEMPORARY GOAL POST INSTALLATION

Marine mammal species	Stock	Density-based exposures	Authorized take
Level B harassment			
North Atlantic right whale *	Western North Atlantic	0.065	0
Fin whale *	Western North Atlantic	0.110	0
Humpback whale	Gulf of Maine	0.145	0
Minke whale	Canadian East Coast	0.333	0
Sei whale *	Nova Scotia	0.040	0
Sperm whale *	North Atlantic	0.003	0

TABLE 16—DENSITY-BASED EXPOSURES AND AUTHORIZED TAKE BY LEVEL B HARASSMENT FROM IMPACT PILE DRIVING ASSOCIATED WITH TEMPORARY GOAL POST INSTALLATION—Continued

Marine mammal species	Stock	Density-based exposures	Authorized take
Level B harassment			
Pygmy sperm whale	Western North Atlantic	^d n/a	^d n/a
Atlantic spotted dolphin	Western North Atlantic	6.373	360
Atlantic white-sided dolphin ^c	Western North Atlantic	0.874	1
Bottlenose dolphin	Southern Migratory Coastal	45.862	270
	Western North Atlantic, Offshore	^a n/a	^a n/a
Clymene dolphin	Western North Atlantic	^d n/a	^d n/a
Common dolphin	Western North Atlantic	4.862	360
False killer whale	Western North Atlantic	^d n/a	^d n/a
Melon-headed whale	Western North Atlantic	^d n/a	^d n/a
Pilot whale <i>spp</i>	Western North Atlantic	0.175	0
Pantropical spotted dolphin	Western North Atlantic	0.019	0
Risso's dolphin	Western North Atlantic	0.081	0
Harbor porpoise	Western North Atlantic	1.178	1
Gray seal ^b	Western North Atlantic	2.387	2
Harbor seal ^b	Western North Atlantic	2.387	2

Note: * denotes species listed under the Endangered Species Act.

^a Given temporary goal post installation would be confined to an area below the 20-m isobath, all of the estimated take has been allocated to the coastal stock.

^b The take request for pinnipeds was allocated to an even 50 percent split to each harbor seal and gray seal.

^c Atlantic white-sided dolphins are not expected, but due to shifts in habitat use, have been included in the take request based on a standard group size annually. We note that animat/exposure modeling was not done for this species.

^d Given take by Level B harassment was precautionarily authorized during two years of foundation installation for these species, no take has been calculated for cable landfall construction activities.

We note that these would be the maximum number of animals that may be harassed during impact pile driving for nearshore temporary goal posts as the analysis conservatively assumes each exposure is a different animal. This is unlikely to be the case for all species shown here but is the most comprehensive assessment of the level of impact from this activity.

HRG Surveys

Dominion Energy's HRG survey activities include the use of impulsive (*i.e.*, boomers and sparkers) and non-impulsive (*i.e.*, Compressed High Intensity Radiated Pulse (CHIRP) Sub-bottom Profilers (SBP)) sources (see Table 4 in the proposed rule (88 FR 28656, May 4, 2023) for a representative list of the acoustic sources and their operational parameters). Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated, even absent mitigation, nor authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.*, pre-start clearance and shutdown measures), discussed in detail below in the Mitigation section, further

strengthens the conclusion that Level A harassment is not a reasonably expected outcome of the survey activity. Therefore, the potential for Level A harassment is not evaluated further in this document. Dominion Energy did not request, and NMFS is not authorizing, take by Level A harassment incidental to HRG surveys. Please see Dominion Energy's application for the CVOW-C Project for details of a quantitative exposure analysis (*i.e.*, calculated distances to Level A harassment isopleths and Level A harassment exposures). No serious injury or mortality is anticipated to result from HRG survey activities.

Specific to HRG surveys, in order to better consider the narrower and directional beams of the sources, NMFS has developed a tool for determining the sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency-dependent absorption and some directionality to refine estimated ensonified zones. Tetra Tech used NMFS' methodology with additional modifications to incorporate a seawater absorption formula and account for energy emitted outside of the primary beam of the source. For sources that operate with different beamwidths, the maximum beam width was used, and

the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (see Table 4 in the proposed rule (88 FR 28656, May 4, 2023)).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate ranges to the Level A harassment and Level B harassment isopleths. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Tetra Tech utilized the following criteria for selecting the appropriate inputs into the NMFS User Spreadsheet Tool (NMFS, 2018):

(1) For equipment that was measured in Crocker and Fratantonio (2016), the reported source level for the most likely operational parameters was selected.

(2) For equipment not measured in Crocker and Fratantonio (2016), the best available manufacturer specifications were selected. Use of manufacturer

specifications represent the absolute maximum output of any source and do not adequately represent the operational source. Therefore, they should be considered an overestimate of the sound propagation range for that equipment.

(3) For equipment that was not measured in Crocker and Fratantonio (2016) and did not have sufficient manufacturer information, the closest proxy source measured in Crocker and Fratantonio (2016) was used.

The Geo Marine sparker measurements and specifications were

provided by the manufacturer. Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP-D700 and CSP-N). The CSP-D700 power source was used in the 700 joules (J) measurements but not in the 1,000 J measurements. The CSP-N source was measured for both 700 J and 1,000 J operations but resulted in a lower source level; therefore, the single maximum source level value was used for both operational levels of the S-Boom.

Table 17 identifies all the representative survey equipment that operates below 180 kHz (*i.e.*, at frequencies that are audible and have the potential to disturb marine mammals) that may be used in support of planned survey activities and are likely to be detected by marine mammals given the source level, frequency, and beamwidth of the equipment. This table also provides all operating parameters used to calculate the distances to threshold for marine mammals.

TABLE 17—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT WITH OPERATING PARAMETERS TO CALCULATE HARASSMENT DISTANCES FOR MARINE MAMMALS

Equipment classification	Survey equipment	Operating frequency (kHz)	Source level (SL _{RMS}) (dB re 1μPa)
Multibeam Echosounder	R2Sonics 2026	170–450	191
Synthetic Aperture Sonar, combined bathymetric/sidescan.	Kraken Aquapix ^a	337	N/A
Sidescan Sonar	Edgetech 4200 dual frequency ^a	300 and 600	N/A
Parametric SBP	Innomar SES-2000 Medium 100	2–22	241
Non-Parametric SBP	Edgetech 216 CHIRP	2–16	193
	Edgetech 512 CHIRP	0.5–12	177
Medium Penetration SBP	Geo Marine Dual 400 Sparker 800 J ^b	0.25–4	200
	Applied Acoustics S-Boom (Triple Plate Boomer 1000 J).	0.5–3.5	203

Note: dB re 1 μPa m—decibels referenced to 1 MicroPascal at 1 meter; kHz—kilohertz.

^aOperating frequencies are above marine mammal hearing thresholds.

^bSource levels for the GeoMarine Dual 400 Sparker (800 J) were provided by the manufacturer for the stacked 400 tip configuration.

Results of modeling using the methodology described above indicated that, of the HRG equipment planned for use by Dominion Energy that has the potential to result in Level B harassment of marine mammals, sound produced by the GeoMarine Dual 400 sparker would propagate furthest to the Level B harassment isopleth (100 m (328 ft);

Table 17). For the purposes of take estimation, it was conservatively assumed that sparker would be the dominant acoustic source for all survey days (although, again, this may not always be the case). Thus, the range to the isopleth corresponding to the threshold for Level B harassment and the boomer and sparkers (100 m) were

used as the basis of take calculations for all marine mammals. This is a conservative approach, as the actual sources used on individual survey days, or during a portion of a survey day, may produce smaller distances to the Level B harassment isopleth.

TABLE 18—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT DISTANCES TO THE LEVEL B HARASSMENT THRESHOLD

Equipment classification	Survey equipment	Distance (m) to Level B harassment threshold
Multibeam Echosounder	R2Sonics 2026	0.3
Synthetic Aperture Sonar, combined bathymetric/sidescan.	Kraken Aquapix ^a	N/A
Sidescan Sonar	Edgetech 4200 dual frequency ^a	N/A
Parametric SBP	Innomar SES-2000 Medium 100	0.7
Non-Parametric SBP	Edgetech 216 CHIRP	10.2
	Edgetech 512 CHIRP	2.4
Medium Penetration SBP	Geo Marine Dual 400 Sparker 800 J	100.0
	Applied Acoustics S-Boom (Triple Plate Boomer 1000 J).	21.9

Note: dB re 1 μPa m—decibels referenced to 1 MicroPascal at 1 meter; kHz—kilohertz.

^aOperating frequencies are above marine mammal hearing thresholds.

To estimate densities for the HRG surveys occurring both within the Lease Area and within the Export Cable Routes for the CVOW-C Project based

on the Roberts *et al.* (2023) dataset the relevant density models using GIS (ESRI, 2017) were overlaid to the CVOW-C Project Area. The boundary of

the CVOW-C HRG Project Area corresponds to the Lease Area and Export Cable Routes, for which the area was not increased due to an additional

perimeter, as was done for foundation installation. For each survey segment, the average densities (*i.e.*, the average density of each grid cell) were averaged by season over the survey duration (spring, summer, fall, and winter) for the entire HRG survey area. The average seasonal density within the HRG survey area was then selected for inclusion into

the take calculations. Refer to Table 20 for the densities used for HRG surveys.

As previously stated, of the HRG equipment planned for use by Dominion Energy that has the potential to result in Level B harassment of marine mammals, sound produced by the GeoMarine Dual 400 sparker would propagate furthest to the Level B harassment isopleth (100

m). This maximum range to the Level B harassment threshold and the estimated trackline distance traveled per day by a given survey vessel (*i.e.*, 58 km (36 mi); Table 19), assuming a travel speed of 1.3 kn (1.49 miles per hour), were then used to calculate the daily ensonified area, or zone of influence (ZOI) around the survey vessel.

TABLE 19—SURVEY DURATIONS AND DAILY/ANNUAL TRACKLINE DISTANCES PLANNED TO OCCUR DURING THE CVOW–C PROJECT

Survey year	Survey segment	Number of active survey vessel days	Estimated distances per day (km)	Annual line kilometers
2024	Pre-lay surveys	65	58	3,770
2025	As-built surveys and pre-lay surveys	249		14,442
2026	As-built surveys	58		3,364
2027	Post-construction surveys	368		21,344
2028	Post-construction surveys	368		21,344

The ZOI is a representation of the maximum extent of the ensonified area around a HRG sound source over a 24-hr period. The ZOI for each piece of equipment operating at or below 180 kHz was calculated per the following formula:

$$\text{Mobile Source ZOI} = (\text{Distance/day} \times 2r) + \pi \times r^2$$

Where:

Distance/day is the maximum distance a survey vessel could travel in a 24-hour period; and

r is the linear distance from the source to the harassment threshold.

The largest daily ZOI (111.6 km² (4.48 mi²)), associated with the use of the sparker, was applied to all planned survey days.

As previously described, this assumes a total length of surveys that will occur within the CVOW–C Project Area as 64,264 km² (24,812.5 mi²). As Dominion

Energy is not sure of the exact geographic locations of the survey effort, these values cannot discreetly be broken up between the Lease Area and the Export Cable Routes. However, the values presented in Table 19 provide a comprehensive accounting of the total annual survey effort anticipated to occur.

For HRG surveys, density data from Roberts *et al.* (2023) were mapped within the boundary of the CVOW–C Project Area using GIS software (ESRI, 2017). The boundary of the CVOW–C HRG Project Area corresponds to the Lease Area and Export Cable Routes, for which the area was not increased due to an additional perimeter, as was done for foundation installation. For each survey segment, the average densities (*i.e.*, the average density of each grid cell) were averaged by season over the survey duration (spring, summer, fall, and winter) for the entire HRG survey area.

The average seasonal density within the HRG survey area was then selected for inclusion into the take calculations. The potential Level B density-based harassment exposures are estimated by multiplying the average seasonal density of each species within the survey area by the daily ZOI. That product was then multiplied by the number of planned survey days in each sector during the approximately 5-year construction timeframe (refer back to Table 19) and the product was rounded to the nearest whole number. As described above, this is a reasonable, but conservative estimate as it assumes the HRG source that results in the greatest isopleth distance to the Level B harassment threshold would be operated at all times during the entire survey, which may not ultimately occur. These density values are found in Table 20.

TABLE 20—HIGHEST AVERAGE SEASONAL MARINE MAMMAL DENSITIES FOR HRG SURVEY ACTIVITIES

Marine mammal species	Stock	Highest average seasonal density (individual/100 km ²)
North Atlantic right whale *	Western North Atlantic	0.095
Fin whale *	Western North Atlantic	0.080
Humpback whale	Gulf of Maine	0.103
Minke whale	Canadian East Coast	0.344
Sei whale *	Nova Scotia	0.038
Sperm whale *	North Atlantic	0.002
Pygmy sperm whale	Western North Atlantic	^a n/a
Atlantic spotted dolphin	Western North Atlantic	4.649
Atlantic white-sided dolphin	Western North Atlantic	0.678
Bottlenose dolphin	Combined Southern Migratory Coastal, Western North Atlantic Offshore	24.157
Clymene dolphin	Western North Atlantic	^a n/a
Common dolphin	Western North Atlantic	6.599
False killer whale	Western North Atlantic	^a n/a
Melon-headed whale	Western North Atlantic	^a n/a
Pilot whale <i>spp</i>	Western North Atlantic	0.065
Pantropical spotted dolphin	Western North Atlantic	0.007

TABLE 20—HIGHEST AVERAGE SEASONAL MARINE MAMMAL DENSITIES FOR HRG SURVEY ACTIVITIES—Continued

Marine mammal species	Stock	Highest average seasonal density (individual/100 km ²)
Risso's dolphin	Western North Atlantic	0.057
Harbor porpoise	Western North Atlantic	1.477
Gray seal	Western North Atlantic	5.402
Harbor seal	Western North Atlantic	5.402

Note: * denotes species listed under the Endangered Species Act.
^a This species was incorporated after the animal analysis was completed so no take was estimated. Instead, a standard group size of animals was used instead for any analysis pertaining to this species.

For most species or species groups, monthly densities are available, though in some cases insufficient data are available or we are unable to differentiate species groups by individual *genus* (e.g., gray and harbor seals). In these situations, additional adjustments are necessary and are described here. For pinnipeds, the density values derived from the Roberts *et al.* (2023) data were considered unrealistic given a reduced occurrence near the CVOW–C Project Area in the summer (Hayes *et al.*, 2021). Based on information found in Hayes *et al.* (2021), a conservative density estimate of 0.00001 animals/km² was used to represent the summer density of both pinniped species within the modeled CVOW–C Project Area and Lease Area plus the 8.9 km perimeter. Any take by Level B harassment derived from these densities would be further split by an even percentage (50/50) for each species. For bottlenose dolphins, due to specific environmental characteristics that were used to partition the Southern Migratory Coastal and Western North Atlantic Offshore stocks, both the coastal and the offshore stocks were divided based on the location of the 20-m isobath. Information by Hayes *et al.* (2021) indicates a boundary between the two stocks at the 20-m isobath located north of Cape Hatteras, North Carolina. Therefore, all bottlenose dolphins whose grid cells were less than the 20-m isobath in the CVOW–C modeling area or within the 8.9 km of the Lease Area were allocated to the Southern Migratory Coastal stock. All density grid cells greater than the 20-m isobath from the CVOW–C modeling area or within the 8.9 km of the Lease Area were allocated to the offshore stock. The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km²), incorporating the maximum seasonal

estimated marine mammal densities as described above. Estimated numbers of each species taken per day across all survey sites are then multiplied by the total number of survey days annually. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula:
Estimated Take = *D* × *ZOI* × # of days
Where:
D is the average seasonal density for each species; and
ZOI is the maximum daily ensonified area to the harassment threshold.
The take estimates were then adjusted, for some species, based on group size and sighting reports from previous projects and/or surveys. These group size estimates for HRG surveys are described below and were incorporated into the estimated take to yield the requested and authorized take estimate:

- *Atlantic white-sided dolphin*: Adjusted based on 1 group size per year (15 per Reeves *et al.*, 2002);
- *Risso's dolphin*: Adjusted based on 1 group size per year (25 per Dominion Energy, 2021; Jefferson *et al.*, 2015);
- *Bottlenose dolphin* (Combined Southern Migratory Coastal, Western North Atlantic Offshore): Adjusted based on 1 group size per day (15 per Jefferson *et al.*, 2015);
- *Pantropical spotted dolphins*: Adjusted based on 1 group size per day (20 individuals);
- *Common dolphins*: Adjusted based on 1 group size per day (20 individuals);
- *Common dolphins*: Adjusted based on 1 group size per year (20 individuals); and
- *Pilot whale spp.*: Adjusted based on 1 group size per year (20 individuals).

Given the very small zone sizes associated with HRG surveys and the lower density/occurrence of these species, no take in addition to that

already authorized for foundation installation (which has much larger acoustic ranges) has been authorized for the following species: false killer whales, melon-headed whales, Clymene dolphins, and pygmy sperm whales. Similar to other activities, the density-based exposure estimates were adjusted due to the manner in which density data is presented in the Duke models for harbor seals, gray seals, short- and long-finned pilot whales, and bottlenose dolphins. More specifically, the takes requested were split 50/50 for both pinniped species, as the Roberts *et al.* (2023) data does not differentiate the density by specific pinniped species. The density for pilot whales represents a single group (*Globicephala spp.*) and is not species-specific. Due to the occurrence of both short-finned and long-finned pilot whales in this area, the requested take was allocated to a collective group, although short-finned pilot whales are commonly seen in southern waters. Due to a reduced spatial resolution at the current state of the survey planning, bottlenose dolphin stocks were combined into a single group for both the coastal stock of bottlenose dolphins (Migratory Southern Coastal) and the offshore stock (Western North Atlantic Offshore).

Below we present the maximum amount of take authorized during HRG surveys occurring during the 5-year effective period for the CVOW–C Project (Table 21). Take by Level A harassment was not requested by Dominion Energy, and it is neither expected nor authorized by NMFS. We note that these would be the maximum number of animals that may be harassed during HRG surveys as the analysis conservatively assumes each exposure is a different animal. This is unlikely to be the case for all species shown here but is the most comprehensive assessment of the level of impact from this activity.

Table 21 – Density-based Estimated and Take Authorized, By Level B Harassment, From HRG Surveys Over 5-years

Marine Mammal Species	Stock	Annual Density-based Exposures From HRG Surveys						Annual Take Authorized From HRG Surveys					
		2024	2025	2026	2027	2028	2029	2024	2025	2026	2027	2028	2029 ^a
North Atlantic right whale*	Western North Atlantic	0.318	1.217	0.283	1.798	1.798	0	0	1	0	2	2	0
Fin whale*	Western North Atlantic	0.378	1.448	0.337	2.140	2.140	0	0	1	0	2	2	0
Humpback whale	Gulf of Maine	0.454	1.738	0.405	2.569	2.569	0	0	2	0	3	3	0
Minke whale	Canadian East Coast	0.786	3.012	0.702	4.452	4.452	0	1	3	1	4	4	0
Sei whale*	Nova Scotia	0.144	0.550	0.128	0.813	0.813	0	0	1	0	1	1	0
Sperm whale*	North Atlantic	0.008	0.029	0.007	0.043	0.043	0	0	0	0	0	0	0
Pygmy sperm whale	Western North Atlantic	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b
Atlantic spotted dolphin	Western North Atlantic	13.618	52.168	12.152	77.100	77.100	0	1,300	4,980	1,160	7,360	7,360	0
Atlantic white-sided dolphin	Western North Atlantic	2.397	9.182	2.139	13.571	13.571	0	15	15	15	15	15	0
Bottlenose dolphin	Southern Migratory	109.021	417.634	97.280	617.227	617.227	0	975	3,735	870	5,520	5,520	0

Marine Mammal Species	Stock	Annual Density-based Exposures From HRG Surveys						Annual Take Authorized From HRG Surveys					
		2024	2025	2026	2027	2028	2029	2024	2025	2026	2027	2028	2029 ^a
	Coastal and Western North Atlantic - Offshore												
Clymene dolphin	Western North Atlantic	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b
Common dolphin	Western North Atlantic	22.730	87.072	20.282	128.685	128.685	0	1,300	4,980	1,160	7,360	7,360	0
False killer whale	Western North Atlantic	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b
Melon-headed whale	Western North Atlantic	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b	n/a ^b
Pilot whale <i>spp.</i>	Western North Atlantic	0.491	1.883	0.439	2.783	2.783	0	20	20	20	20	20	0
Pantropical spotted dolphin	Western North Atlantic	0.053	0.203	0.047	0.300	0.300	0	20	20	20	20	20	0
Risso's dolphin	Western North Atlantic	0.280	1.072	0.250	1.584	1.584	0	25	25	25	25	25	0
Harbor porpoise	Western North Atlantic	5.278	20.218	4.710	29.881	29.881	0	5	20	5	30	30	0

Marine Mammal Species	Stock	Annual Density-based Exposures From HRG Surveys						Annual Take Authorized From HRG Surveys					
		2024	2025	2026	2027	2028	2029	2024	2025	2026	2027	2028	2029 ^a
Gray seal	Western North Atlantic	5.070	19.422	4.524	28.704	28.704	0	5	19	5	29	29	0
Harbor seal	Western North Atlantic	5.070	19.422	4.524	28.704	28.704	0	5	19	5	29	29	0

Note: * denotes species listed under the Endangered Species Act.

a – Although the final rule is effective for 5 full years (from early 2024 to early 2029), no work is anticipated to occur in 2029 which means no take has been requested or authorized for 2029.

b – Given take by Level B harassment was precautionarily authorized during two years of foundation installation for these species, no take has been calculated for HRG survey activities.

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Total Authorized Takes Across All Specified Activities

The number of Level A harassment and Level B harassment takes authorized during WTG and OSS foundation installation, cable landfall construction, and HRG surveys are presented in Table 22. The mitigation and monitoring measures provided in the Mitigation and Monitoring and Reporting sections are activity-specific and are designed to minimize, to the extent practicable, acoustic exposures to marine mammal species.

The take numbers NMFS is authorizing (Tables 22 and 23) are considered the maximum number that could occur for the following key reasons:

- The authorized take accounts for 183 pile driving events when only 176 foundations may be installed. It could be that no piles will require the need to be re-driven.
- The amount of Level A harassment authorized considered the maximum of up to two monopiles per day being installed and used acoustic ranges that do not account for animal movement.
- The number of authorized takes by Level A harassment does not account for the likelihood that marine mammals

will avoid a stimulus when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury.

- All take estimates assumed all piles are installed in the month with the highest average seasonal and/or annual densities for each marine mammal species and/or stock based on the construction schedule.

- Dominion Energy assumed the maximum number of temporary cofferdams (up to 9) and goal posts (up to 108) would be installed when, during construction, fewer piles may be installed and, in the case of cofferdams, may not be installed at all (Dominion Energy may use a gravity-cell structure *in lieu* of cofferdams which would not generate noise levels that would result in marine mammal harassment).

- The number of authorized takes by Level B harassment does not account for the effectiveness of the required mitigation and monitoring measures for any species, with the exception of spatio-temporal restrictions on pile driving (*i.e.*, no foundation pile driving from November 1st through April 30th, annually and no foundation pile driving may start during nighttime), and the required use of a noise attenuation device (at least a double bubble curtain; 10 dB of sound attenuation).

The Year 1 authorized take includes HRG surveys, vibratory and impact installation of WTG and OSS foundations, the impact installation and removal of temporary goal posts, and the vibratory installation and removal of temporary cofferdams. Year 2 includes HRG surveys and the vibratory and impact installation of WTG and OSS foundations. Years 3, 4, and 5 each include HRG surveys only. Dominion Energy has noted that Year 3 and Year 4 may include some installation of foundation piles for WTGs if they fall behind their construction schedule. However, if this occurs, this would just reduce the number of WTGs installed in Year 2. Exact durations for HRG surveys in each construction are not given although estimates are provided above and are repeated here: 65 days in 2024, 249 days in 2025, 58 days in 2026, and 368 days in each of 2027 and 2028. These estimates are based on the effort of two concurrently operating survey vessels.

Table 22 shows the authorized take of each species for each year based on the planned activities. Tables 23 and 24 show the total authorized take over 5 years and the maximum take authorized in any one year, respectively.

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Table 22 – Authorized Level A Harassment and Level B Harassment Takes For All Activities Over 5 Years (2024-2029)

Marine Mammal Species	Stock	Total Authorized Annual Take											
		2024 ^c		2025 ^c		2026		2027		2028		2029 ^a	
		Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale*	Western North Atlantic	0	6	0	7	0	0	0	2	0	2	0	0
Fin whale*	Western North Atlantic	4	113	3	91	0	0	0	2	0	2	0	0
Humpback whale	Gulf of Maine	4	130	4	106	0	0	0	3	0	3	0	0
Minke whale	Canadian East Coast	8	56	7	51	0	1	0	4	0	4	0	0
Sei whale*	Nova Scotia	1	3	1	3	0	0	0	1	0	1	0	0
Sperm whale*	North Atlantic	0	3	0	3	0	0	0	0	0	0	0	0
Pygmy sperm whale ^b	Western North Atlantic	0	1	0	1	0	0	0	0	0	0	0	0
Atlantic spotted dolphin	Western North Atlantic	0	4,008	0	6,876	0	1,160	0	7,360	0	7,360	0	0
Atlantic white-sided dolphin	Western North Atlantic	0	36	0	30	0	15	0	15	0	15	0	0

Marine Mammal Species	Stock	Total Authorized Annual Take											
		2024 ^c		2025 ^c		2026		2027		2028		2029 ^a	
		Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
Bottlenose dolphin	Western North Atlantic - Offshore	0	4,290	0	3,602	0	0	0	0	0	0	0	0
	Southern Migratory Coastal	0	450	0	0	0	0	0	0	0	0	0	0
	Southern Migratory Coastal and Western North Atlantic - Offshore	0	975	0	3,735	0	870	0	5,520	0	5,520	0	0
Clymene dolphin ^b	Western North Atlantic	0	5	0	5	0	0	0	0	0	0	0	0
Common Dolphin	Western North Atlantic	0	3,620	0	6,360	0	1,160	0	7,360	0	7,360	0	0
False killer whale ^b	Western North Atlantic	0	4	0	4	0	0	0	0	0	0	0	0
Melon-headed whale ^b	Western North Atlantic	0	5	0	5	0	0	0	0	0	0	0	0

Marine Mammal Species	Stock	Total Authorized Annual Take											
		2024 ^c		2025 ^c		2026		2027		2028		2029 ^a	
		Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
Pilot whale <i>spp.</i>	Western North Atlantic	0	82	0	70	0	20	0	20	0	20	0	0
Pantropical spotted dolphin	Western North Atlantic	0	40	0	40	0	20	0	20	0	20	0	0
Risso's dolphin	Western North Atlantic	0	50	0	48	0	25	0	25	0	25	0	0
Harbor porpoise	Gulf of Maine/Bay of Fundy	1	36	1	40	0	5	0	30	0	30	0	0
Gray seal	Western North Atlantic	1	83	1	72	0	5	0	29	0	29	0	0
Harbor seal	Western North Atlantic	1	83	1	72	0	5	0	29	0	29	0	0

Note: * denotes species listed under the Endangered Species Act.

a – Although the final rule will be effective for 5 full years (from early 2024 to early 2029), no work is anticipated to occur in 2029 which means no take has been requested or authorized for 2029.

b – While these species were not originally included in Dominion Energy's request, given recorded sightings/detections of these species during previous Dominion Energy IHAs in the same general area, NMFS has included these as species that may be harassed (by Level B harassment only) during the five-year effective period of this final rulemaking.

c – Either 2024 or 2025 represent the maximum amount of take that is authorized annually, specific to each species and/or stock.

Table 23 – Total 5-Year Takes Of Marine Mammals (By Level A Harassment And Level B Harassment) Authorized For All Activities (2024-2029)

Marine Mammal Species	Stock	NMFS Stock Abundance	5-Year Totals		
			Authorized Level A Harassment	Authorized Level B Harassment	5-year Total (Level A + Level B)
North Atlantic right whale*	Western North Atlantic	338 ^a	0	17	17
Fin whale*	Western North Atlantic	6,802	7	208	215
Humpback whale	Gulf of Maine	1,396	8	242	250
Minke whale	Canadian East Coast	21,968	15	116	131
Sei whale*	Nova Scotia	6,292	2	8	10
Sperm whale*	North Atlantic	4,349	0	6	6
Pygmy sperm whale ^b	Western North Atlantic	7,750	0	2	2
Atlantic spotted dolphin	Western North Atlantic	39,921	0	26,764	26,764
Atlantic white-sided dolphin	Western North Atlantic	93,233	0	111	111
Bottlenose dolphin	Western North Atlantic - Offshore	62,851	0	7,892	7,892
	Southern Migratory Coastal	6,639	0	450	450
	Southern Migratory Coastal and Western North Atlantic - Offshore	69,490	0	16,620	16,620
Clymene dolphin ^b	Western North Atlantic	4,237	0	10	10
Common dolphin	Western North Atlantic	172,974	0	25,860	25,860
False killer whale ^b	Western North Atlantic	1,791	0	8	8

Marine Mammal Species	Stock	NMFS Stock Abundance	5-Year Totals		
			Authorized Level A Harassment	Authorized Level B Harassment	5-year Total (Level A + Level B)
Melon-headed whale ^b	Western North Atlantic	n/a	0	10	10
Pilot whale <i>spp.</i>	Western North Atlantic	39,215	0	212	212
Pantropical spotted dolphin	Western North Atlantic	6,593	0	140	140
Risso's dolphin	Western North Atlantic	35,215	0	173	173
Harbor porpoise	Gulf of Maine/Bay of Fundy	95,543	2	141	143
Gray seal	Western North Atlantic	27,300	2	218	220
Harbor seal	Western North Atlantic	61,336	2	218	220

Note: * denotes species listed under the Endangered Species Act.

a – NMFS notes that, even using the maximum estimate presented in the 2021 North Atlantic Right whale Report Card (Pettis et al., 2022; $n=350$; $nmin=336$ with 95 percent confidence interval ± 14), the total percentage of this species that would be taken by Level B harassment only over the 5-year period of the final rule would be two percent of the overall population of North Atlantic right whales. While NMFS acknowledges the estimate found on the North Atlantic Right Whale Consortium's website (<https://www.narwc.org/report-cards.html>), we have used the value presented in the final 2022 SARs (88 FR 54592, August 11, 2023, <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>; $nbest=338$) as the best available science for this final action.

b – While these species were not originally included in Dominion Energy's request, given recorded sightings/detections of these species during previous Dominion Energy IHAs in the same general area, NMFS has included these as species that may be harassed (by Level B harassment only) during the 5-year effective period of this final rulemaking.

In making the negligible impact determination, NMFS assesses both the greatest number of authorized takes of each marine mammal species or stocks that could occur within any one year, which in the case of this rule is based on the predicted take in either Year 1 (2024) or Year 2 (2025), and the total	taking of each marine mammal species or stock during the five-year effective period of the rule. In this calculation, the maximum estimated number of Level A harassment takes in any one year is summed with the maximum estimated number of Level B harassment takes in any one year for each species	to yield the highest number of estimated takes that could occur in any year. We recognize that certain activities could shift within the 5-year effective period of the rule; however, the rule allows for that flexibility and the takes are not expected to exceed those shown in Table 24 in any one year.
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Table 24 – Maximum Number Of Takes (Level A Harassment and Level B Harassment) Authorized For Any One Year Relative To Stock Population Size

Marine Mammal Hearing Group and Species	Stock	NMFS Stock Abundance	Maximum Annual Take Authorized ^d			
			Maximum Level A Harassment Authorized In Any One Year	Maximum Level B Harassment Authorized In Any One Year	Maximum Annual Take (Maximum Level A Harassment + Maximum Level B Harassment) Authorized In Any One Year	Total Percent Of Stock Authorized To Be Taken In Any One Year Based on Maximum Annual Take ^a
North Atlantic Right Whale*	Western North Atlantic	338 ^b	0	7	7	2.07
Fin Whale*	Western North Atlantic	6,802	4	113	117	1.72
Humpback Whale	Gulf of Maine	1,396	4	130	134	9.60
Minke Whale	Canadian East Coast	21,968	8	56	64	0.29
Sei Whale*	Nova Scotia	6,292	1	3	4	0.06
Sperm Whale*	North Atlantic	4,349	0	3	3	0.07
Pygmy Sperm Whale ^c	Western North Atlantic	7,750	0	1	1	0.01
Atlantic Spotted Dolphin	Western North Atlantic	39,921	0	7,360	7,360	18.44
Atlantic White-sided Dolphin	Western North Atlantic	93,233	0	36	36	0.04
Bottlenose Dolphin	Western North Atlantic - Offshore	62,851	0	4,290	4,290	6.83
	Southern Migratory Coastal	6,639	0	450	450	6.78
	Southern Migratory Coastal and	69,490	0	5,520	5,520	7.94

Marine Mammal Hearing Group and Species	Stock	NMFS Stock Abundance	Maximum Annual Take Authorized ^d			
			Maximum Level A Harassment Authorized In Any One Year	Maximum Level B Harassment Authorized In Any One Year	Maximum Annual Take (Maximum Level A Harassment + Maximum Level B Harassment) Authorized In Any One Year	Total Percent Of Stock Authorized To Be Taken In Any One Year Based on Maximum Annual Take ^a
	Western North Atlantic - Offshore					
Clymene Dolphin ^c	Western North Atlantic	4,237	0	5	5	0.12
Common Dolphin	Western North Atlantic	172,974	0	7,360	7,360	4.25
False killer Whale ^c	Western North Atlantic	1,791	0	4	4	0.22
Melon-headed Whale ^c	Western North Atlantic	n/a	0	5	5	n/a
Pilot Whale <i>spp.</i>	Western North Atlantic	39,215	0	82	82	0.21
Pantropical Spotted Dolphin	Western North Atlantic	6,593	0	40	40	0.61
Risso's Dolphin	Western North Atlantic	35,215	0	50	50	0.14
Harbor Porpoise	Gulf of Maine/Bay of Fundy	95,543	1	40	41	0.04
Gray Seal	Western North Atlantic	27,300	1	83	84	0.31
Harbor Seal	Western North Atlantic	61,336	1	83	84	0.14

Note: * denotes species listed under the Endangered Species Act.

a – Calculations of percentage of stock taken are based on the maximum authorized Level A harassment take in any one year + the total authorized Level B harassment take in any one year and then compared against the best available abundance estimate, as shown in Table 2 and 24. For this final action, the best available abundance estimates are derived from the NMFS' final 2022 SARs (88 FR 54592, August 11, 2023, <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>).

b – NMFS notes that, even using the maximum estimate presented in the 2021 North Atlantic Right whale Report Card (Pettis et al., 2022; $n=350$; $n_{min}=336$ with 95 percent confidence interval ± 14), the total percentage of this species that would be taken by Level B harassment only over the 5-year period of the final rule will be two percent of the overall population of North Atlantic right whales. While NMFS acknowledges the estimate found on the North Atlantic Right Whale Consortium's website (<https://www.narwc.org/report-cards.html>), we have used the value presented in the final 2022 SARs (88 FR 54592, August 11, 2023, <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>; $n_{best}=338$) as the best available science for this final action.

c – While these species were not originally included in Dominion Energy's request, given recorded sightings/detections of these species during previous Dominion Energy IHAs in the same general area, NMFS has included these as species that may be harassed (by Level B harassment only) during the 5-year effective period of this final rulemaking.

*d – This value assumes that each instance of take is a different individual, which is not likely the case for all species, as described in the **Negligible Impact Analysis and Determination** section.*

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Mitigation

As described in the Changes From the Proposed to Final Rule section, we have made changes to some mitigation measures since the proposed rule. These changes are described in detail in the sections below and, otherwise, the mitigation requirements have not changed since the proposed rule.

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS' regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, personnel safety, practicality of implementation, and, in the case of a military readiness activity, impact on the effectiveness of the military readiness activity.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations

issued in association with in-water construction activities (e.g., soft-start, establishing shutdown zones). Additional measures have also been incorporated to account for the fact that the 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 harassment might occur.

Generally speaking, the mitigation measures considered and required here fall into three categories: spatio-temporal (seasonal and daily) work restrictions, real-time measures (shutdown, clearance, and vessel strike avoidance), and noise attenuation/reduction measures. Spatio-temporal restrictions, such as seasonal work restrictions, are designed to avoid or minimize operations when marine mammals are concentrated or engaged in behaviors that make them more susceptible or make impacts more likely. Such restrictions reduce both the number and severity of potential takes and are effective in reducing both chronic (longer-term) and acute effects. Real-time measures, such as implementation of shutdown and clearance zones, as well as vessel strike avoidance measures, are intended to reduce the probability or severity of harassment by taking steps in real time once a higher-risk scenario is identified (e.g., once animals are detected within an impact zone). Noise attenuation measures, such as bubble curtains, are intended to reduce the noise at the source, which reduces both acute impacts, as well as the contribution to aggregate and cumulative noise that may result in longer-term chronic impacts.

Below, we briefly describe the required training, coordination, and vessel strike avoidance measures that apply to all specified activities and then we describe the measures that apply to specific specified activities (*i.e.*, foundation installation, nearshore installation and removal activities for cable laying, and HRG surveys). Specific requirements can be found in Section 217.294 (Mitigation requirements) as found in Part 217—Regulations Governing The Taking And Importing Of Marine Mammals at the end of this rulemaking.

Training and Coordination

NMFS requires all Dominion Energy employees and contractors conducting activities on the water, including, but not limited to, all vessel captains and crew are trained in marine mammal

detection and identification, communication protocols, and all required measures to minimize impacts on marine mammals and support Dominion Energy'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, Dominion Energy 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 shut down 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 would receive training about marine mammals and other protected species known or with the potential to occur in the Project Area, making observations in all weather conditions, and vessel strike avoidance measures. In addition, training would include information and resources available regarding applicable Federal laws and regulations for protected species. Dominion Energy will provide documentation of training to NMFS.

North Atlantic Right Whale Awareness Monitoring

Dominion Energy must use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale Sightings Advisory System, monitoring of U.S. Coast Guard very high frequency (VHF) Channel 16 throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (e.g., establishment of a zone identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic right whale presence in the area through ongoing visual and passive acoustic monitoring efforts and opportunities (outside of Dominion Energy's efforts),

and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales.

Vessel Strike Avoidance Measures

This final rule contains numerous vessel strike avoidance measures that reduce the risk that a vessel and marine mammal could collide. While the likelihood of a vessel strike is generally low, they are one of the most common ways that marine mammals are seriously injured or killed by human activities. Therefore, enhanced mitigation and monitoring measures are required to avoid vessel strikes to the extent practicable. While many of these measures are proactive intending to avoid the heavy use of vessels during times when marine mammals of particular concern may be in the area, several are reactive and occur when a project personnel sights a marine mammal. The mitigation requirements are described generally here and in detail in the regulation text at the end of this final rule (see 50 CFR 217.294(b)). Dominion Energy 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, Dominion Energy is required to monitor for and maintain a minimum separation distance from marine mammals and operate vessels in a manner that reduces the potential for vessel strike. Regardless of the vessel's size, all vessel operators, crews, and dedicated visual observers (*i.e.*, PSO or trained crew member) must maintain a vigilant watch for all marine mammals 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).

All project vessels, regardless of size, must maintain the following minimum separation zones: 500 m from North Atlantic right whales; 100 m from sperm whales and non-North Atlantic right whale baleen whales; and 50 m from all delphinid cetaceans and pinnipeds (an exception is made for those species that approach the vessel (*i.e.*, bow-riding dolphins)). If any of these species are sighted within their respective

minimum separation zone, the underway vessel must shift its engine to neutral and the engines must not be engaged until the animal(s) has been observed to be outside of the vessel's path and beyond the respective minimum separation zone. If a North Atlantic right whale is observed at any distance by any project personnel or acoustically detected, project vessels must reduce speeds to 10 kn (11.5078 miles per hour (mph)). Additionally, in the event that any project-related vessel, regardless of size, observes any large whale (other than a North Atlantic right whale) within 500 m of an underway vessel, the vessel is required to shift engines into neutral. The vessel shall remain in neutral until the North Atlantic right whale has moved beyond 500 m and the 10 kn speed restriction will remain in effect as outlined in 50 CFR 217.294(b).

All of the project-related vessels are required to comply with existing NMFS vessel speed restrictions for North Atlantic right whales and the measures within this rulemaking for operating vessels around North Atlantic right whales and other marine mammals. When NMFS vessel speed restrictions are not in effect and a vessel is traveling at greater than 10 kn, in addition to the required dedicated visual observer, Dominion Energy is required to monitor the crew transfer vessel transit corridor (the path crew transfer vessels take from port to any work area) in real-time with PAM prior to and during transits. To maintain awareness of North Atlantic right whale presence, vessel operators, crew members, and the marine mammal monitoring team would monitor U.S. Coast Guard VHF Channel 16, WhaleAlert, the Right Whale Sighting Advisory System (RWSAS), and the PAM system. Any marine mammal observed by project personnel must be immediately communicated to any on-duty PSOs, PAM operator(s), and all vessel captains. Any North Atlantic right whale or large whale observation or acoustic detection by PSOs or PAM operators must be conveyed to all vessel captains.

All vessels would be equipped with an AIS and Dominion Energy must report all MMSI numbers to NMFS Office of Protected Resources prior to initiating in-water activities. Dominion Energy would submit a NMFS-approved North Atlantic Right Whale Vessel Strike Avoidance Plan at least 180 days prior to commencement of vessel use. Dominion Energy's compliance with these measures will reduce the likelihood of vessel strike to the extent practicable. These measures increase awareness of marine mammals in the

vicinity of project vessels and require project vessels to reduce speed when marine mammals are detected (by PSOs, PAM, and/or through another source, *e.g.*, RWSAS) and maintain separation distances when marine mammals are encountered. While visual monitoring is useful, reducing vessel speed is one of the most effective, feasible options available to reduce the likelihood of and effects from a vessel strike. Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart, 2007; Conn and Silber, 2013; Van der Hoop *et al.*, 2014; Martin *et al.*, 2015; Crum *et al.*, 2019).

Seasonal and Daily Restrictions

Spatio-temporal work 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. Seasonal work restrictions provide additional benefit for marine mammals during periods where there could be higher occurrence or presence in the Project Area and specified geographic area. Dominion Energy proposed, and 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 from November 1st through April 30th, including other baleen whales.

As described previously, Dominion Energy proposed, and NMFS is requiring, that no foundation pile driving activities occur November 1st through April 30th. Dominion Energy has planned to construct the cofferdams and goal posts from May 1st through October 31st within the first year of the effective period of the regulations and LOA. However, NMFS is not requiring any seasonal restrictions due to the relatively short duration of work and low associated impacts to marine mammals. Although North Atlantic right whales do migrate in coastal waters, they do not typically migrate very close to shore off of Virginia and/or within Virginia nearshore environments where work would be

occurring. Given the distance to the Level B harassment isopleth is conservatively modeled at approximately 3.1 km (vibratory pile driving for cofferdams) and 1.5 km (impact pile driving of goal posts), any exposure to pile driving during cofferdams and goal posts installation would be at levels closer to the 120-dB Level B harassment threshold and not at louder source levels. NMFS is not adding seasonal restrictions to HRG surveys given the limited duration in which survey effort would occur (*i.e.*, 65 days in 2024; 249 days in 2025; 58 days in 2026; and 368 days in each of 2027 and 2028 (assuming each day an individual vessel is operating constitutes a day of vessel effort)) and the limited impacts expected from HRG surveys on marine mammals.

North Atlantic right whales may be present in and around the Project Area throughout the year (*e.g.*, Davis *et al.*, 2017; Roberts *et al.*, 2023; Salisbury *et al.*, 2015). However, it would not be practicable to restrict foundation pile driving year-round. Based upon the best scientific information available (Roberts *et al.*, 2023), the highest densities of North Atlantic right whales in the specified geographic region are expected during the months of January through April, with densities starting to increase in November and taper off in May. To further ensure impacts to North Atlantic right whales are minimized, Dominion Energy proposed, and NMFS is carrying forward in this final rule, a requirement to not install foundations in November. Specifically, during Dominion Energy's planned foundation pile driving window, May represents the highest density period of North Atlantic right whales, even though it is relatively low when compared to other high-density months.

As described previously, no foundation pile driving activities may occur November 1st through April 30th. Dominion Energy has planned to construct the cofferdams and goal posts from May 1st through October 31st within the first year of the effective period of the regulations and LOA. However, NMFS is not requiring any seasonal restrictions due to the relatively short duration of work and low associated impacts to marine mammals. Although North Atlantic right whales do migrate in coastal waters, they do not typically migrate very close to shore off of Virginia and/or within Virginia nearshore environments where work would be occurring. Given the distance to the Level B harassment isopleth is conservatively modeled at approximately 3.1 km (vibratory pile

driving for cofferdams) and 1.5 km (impact pile driving of goal posts), any exposure to pile driving during cofferdams and goal posts installation would be at levels closer to the 120-dB Level B harassment threshold and not at louder source levels. NMFS is not adding seasonal restrictions to HRG surveys; however, Dominion Energy would only perform a predetermined amount of 24-hour survey effort for a specific number of days within specific years (*i.e.*, 65 days in 2024; 249 days in 2025; 58 days in 2026; and 368 days in each of 2027 and 2028 (assuming each day an individual vessel is operating constitutes a day of vessel effort)).

NMFS is also requiring spatio-temporal restrictions for some activities. Within any 24-hour period, Dominion Energy would be limited to installing a maximum of two monopile WTG foundations (one standard and one hard-to-drive) or two pin piles for OSS jacket foundations, although some days Dominion Energy would only install one monopile foundation for WTGs. NMFS notes that Dominion Energy did not request to initiate foundation pile driving during nighttime hours. Because of this, Dominion Energy would only initiate foundation pile driving (inclusive of both vibratory and impact) during daylight hours within their specific pile driving window (*i.e.*, May 1st through October 31st), defined as no earlier than 1 hour after civil sunrise and no later than 1.5 hours before civil sunset. Because of this, no nighttime pile driving (defined as pile driving beginning after defined nighttime hours) is expected to occur during the effective period of the rule. However, Dominion Energy may continue pile driving after dark if installation of the same pile began during daylight hours (*i.e.*, 1.5 hours before civil sunset). In either situation, Dominion Energy would still need to adequately monitor all relevant zones to ensure the most effective mitigative actions are being undertaken, in alignment with an Alternative Monitoring Plan that would be submitted to NMFS for approval prior to foundation pile driving beginning. This Plan would be made public on NMFS' website upon approval. Subsequent monitoring reports submitted by Dominion Energy will allow NMFS to continue to evaluate the efficacy of the technologies and methodologies and to initiate adaptive management approaches, if necessary. We also continue to encourage Dominion Energy to further investigate and test advanced technology detection systems.

Any and all vibratory pile driving associated with cofferdams and goal posts installation and removal would

only be able to occur during daylight hours. Lastly, given the very small Level B harassment zone associated with HRG survey activities and no anticipated or authorized Level A harassment, NMFS is not requiring any daily restrictions for HRG surveys.

More information on activity-specific seasonal and daily restrictions can be found in the regulatory text at the end of this rulemaking.

Noise Abatement Systems

Dominion Energy is required to employ NAS, also known as noise attenuation systems, during all foundation installation (inclusive of vibratory and impact pile driving) to reduce the sound pressure levels that are transmitted through the water in an effort to reduce ranges to acoustic thresholds and minimize, to the extent practicable, any acoustic impacts resulting from these activities. 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 (*i.e.*, Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges (*e.g.*, 100–800 Hz), and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices.

The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design

as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. Dähne *et al.* (2017) found that single bubble curtains that reduce sound levels by 7 to 10 dB reduced the overall sound level by approximately 12 dB when combined as a double bubble curtain for 6-m steel monopiles in the North Sea. During installation of monopiles (consisting of approximately 8-m in diameter) for more than 150 WTGs in comparable water depths (>25 m) and conditions in Europe indicate that attenuation of 10 dB is readily achieved (Bellmann, 2019; Bellmann *et al.*, 2020) using single big bubble curtains for noise attenuation. As a double bubble curtain is required to be used (noting a single bubble curtain is not allowed), Dominion Energy is required to maintain numerous operational performance standards. These standards are defined in the regulatory text at the end of this rulemaking, and include, but are not limited to, construction contractors must train personnel in the proper balancing of airflow to the bubble ring and Dominion Energy must submit a performance test and maintenance report to NMFS within 72 hours following the performance test. Corrections to the attenuation device to meet regulatory requirements must occur prior to use during foundation installation activities. In addition, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed. If Dominion Energy uses a noise mitigation device in addition to a double bubble curtain, similar quality control measures are required.

Dominion Energy is required to use at least a double bubble curtain. Should the research and development phase of newer systems demonstrate effectiveness, as part of adaptive management, Dominion Energy may submit data on the effectiveness of these systems and request approval from NMFS to use them during foundation installation activities.

Dominion Energy 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 noise attenuation systems in the case that any SFV measurements demonstrate noise levels are above those modeled, assuming 10 dB. These frequent and immediate reports allow NMFS to better understand the sound fields to which marine mammals are being exposed and require immediate corrective action should they be misaligned with

anticipated noise levels within our analysis.

Noise abatement devices are not required during HRG surveys, cofferdam (sheet pile) installation and removal, and goal post (pipe pile) installation and removal. Regarding cofferdam sheet pile and goal post pipe pile installation and removal, NAS is not practicable to implement due to the physical nature of linear sheet piles and angled pipe piles and here is a low risk for impacts to marine mammals due to the short work duration and lower noise levels produced during the activities. Regarding HRG surveys, NAS cannot practicably be employed around a moving survey ship, but Dominion Energy is required to make efforts to minimize source levels by using the lowest energy settings on equipment that has the potential to result in harassment of marine mammals (e.g., sparkers, CHIRPs, boomers) and turn off equipment when not actively surveying. Overall, minimizing the amount and duration of noise in the ocean from any of the project's activities through use of all means required (e.g., noise abatement, turning off power) will effect the least practicable adverse impact on marine mammals.

Clearance and Shutdown Zones

NMFS requires the establishment of both clearance and, where technically feasible, shutdown zones during project activities that have the potential to result in harassment of marine mammals. The purpose of "clearance" of a particular zone is to minimize potential instances of auditory injury and more severe behavioral disturbances by delaying the commencement of an activity if marine mammals are near the activity. The purpose of a shutdown is to prevent a specific acute impact, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity.

All relevant clearance and shutdown zones during project activities would be monitored by NMFS-approved PSOs and/or PAM operators (as described in the regulatory text at the end of this rulemaking). At least one PAM operator must review data from at least 24 hours prior to any foundation installation and must actively monitor hydrophones for 60 minutes prior to commencement of these activities. Any sighting or acoustic detection of a North Atlantic right whale triggers a delay to commencing pile driving and shutdown.

Prior to the start of certain specified activities (foundation installation, cofferdam install and removal, HRG surveys), Dominion Energy must ensure

designated areas (*i.e.*, clearance zones; see Tables 25, 26, 27, 28, and 29) 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, where the zone must be confirmed free of marine mammals at least 30 minutes directly prior to commencing these activities. 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. All required clearance and shutdown zones for large whales are larger than the largest modeled acoustic range ($R_{95\%}$) distances to thresholds corresponding to Level A harassment (SEL and peak). For foundation installation, the minimum visibility zone would extend 2,000 m from the WTG monopile or OSS pin piles. This is larger than the distance 1,750 m shutdown zone used during the construction of the two CVOW Pilot Project turbines (then called the "exclusion zone"), given larger piles and higher hammer energy planned for use, which creates a larger distance to the Level A harassment threshold (see proposed rule for more information). Even with the larger acoustic ranges produced from Tetra Tech's conservative modeling for the CVOW-C project, the minimum visibility zone does not differ greatly from those presented for other nearby projects which calculated distances to thresholds in consideration of animal movement (*i.e.*, off of New Jersey for both the Ocean Wind 1 final rule—1.65 km (1.03 mi) in the summer and 2.5 km (1.56 mi) in the winter (see 88 FR 62898, September 13, 2023) and the Atlantic Shores South proposed rule—1.9 km (1.2 mi; see 88 FR 65430, September 22, 2023)).

For cofferdam and goal post pile driving and HRG surveys, monitoring must be conducted for 30 minutes prior to initiating activities and the clearance zones must be free of marine mammals during that time.

For any other in-water construction heavy machinery activities (e.g., trenching, cable laying, *etc.*), if a marine mammal is on a path towards or comes within 10 m (32.8 ft) of equipment, Dominion Energy is required to cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.

Once an activity begins, any marine mammal entering their respective shutdown zone would trigger the

activity to cease. In the case of pile driving, the shutdown requirement may be waived if it is not practicable due to imminent risk of injury or loss of life to an individual or risk of damage to a vessel that creates risk of injury or loss of life for individuals, or if the lead engineer determines there is pile refusal or pile instability. In situations when shutdown is called for during foundation pile driving but Dominion Energy 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 shutdown is not feasible because the shutdown combined with impending weather conditions may require the piling vessel to “let go” which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Dominion Energy must document and report to NMFS all cases where the emergency exemption is taken.

After shutdown, foundation pile driving may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods, or, if required to maintain pile stability, at which time

the lowest hammer energy must be used to maintain stability. If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving must not restart until the North Atlantic right whale has neither been visually nor acoustically detected for 30 minutes. Upon re-starting pile driving, soft-start protocols must be followed if pile driving has ceased for 30 minutes or longer.

The clearance and shutdown zone sizes vary by species and are shown in Tables 25 and 26, 27, 28, and 29 for each planned activity. Dominion Energy is allowed to request modification to these zone sizes pending results of sound field verification (see regulatory text at the end of this rulemaking). Any changes to zone size would be part of adaptive management and would require NMFS’ approval.

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Table 25 – Mitigation Zone Distances During Vibratory And Impact Pile Driving Of WTG Monopile Foundations, Assuming The Maximum Daily Build-Out (Two Piles Installed Per Day) And Deep Water Conditions (Inclusive Of 10 dB Of Sound Attenuation)

Marine Mammals	WTG Monopile Foundations ^{a, b}							
	Impact Pile Driving Installation				Vibratory Pile Driving Installation			
	Clearance Zone (m) ^d		Shutdown Zone (m) ^d		Clearance Zone (m) ^d		Shutdown Zone (m) ^d	
	One Pile Per Day	Two Piles Per Day	One Pile Per Day	Two Piles Per Day	One Pile Per Day	Two Piles Per Day	One Pile Per Day	Two Piles Per Day
North Atlantic right whale - PAM detection	Any distance							
North Atlantic right whale - visual detection								
All species (other than North Atlantic right whale) - PAM detection	10,000 ^c							
All other Mysticetes and sperm whales - visual detection	5,100	6,500	1,750	1,750	1,000	1,000	1,000	1,000
Dolphins and pilot whales - visual detection	500	500	500	500	250	250	250	250
Harbor porpoises	750	750	750	750	500	500	500	500
Seals - visual detection	500	500	500	500	250	250	250	250

- a – The minimum visibility zone, an area in which marine mammals must be able to be visually detected, extends 2.0 km.*
- b – Dominion Energy may request modification of these zones based on the results of sound field verification.*
- c – To align with the regulatory text, NMFS has added a 10 km PAM monitoring zone for all species.*
- d - This zone applies to both visual and PAM.*

Table 26 – Mitigation Zone Distances During Vibratory And Impact Pile Driving Of OSS Jacket Foundations, Assuming The Maximum Daily Build-Out (Two Pin Piles Installed Per Day; Inclusive Of 10 dB Of Sound Attenuation)

Marine Mammals	OSS Jacket Foundations ^{a, b}							
	Impact Pile Driving Installation				Vibratory Pile Driving Installation			
	Clearance Zone (m) ^d		Shutdown Zone (m) ^d		Clearance Zone (m) ^d		Shutdown Zone (m) ^d	
	One Pile Per Day	Two Piles Per Day	One Pile Per Day	Two Piles Per Day	One Pile Per Day	Two Piles Per Day	One Pile Per Day	Two Piles Per Day
North Atlantic right whale - PAM detection	Any distance							
North Atlantic right whale - visual detection								
All species (other than North Atlantic right whale) - PAM detection	10,000 ^c							
All other Mysticetes and sperm whales - visual detection	5,100	6,500	1,750	1,750	1,000	1,000	1,000	1,000
Dolphins and pilot whales - visual detection	500	500	500	500	250	250	250	250
Harbor porpoises - visual detection	750	750	750	750	500	500	500	500
Seals - visual detection	500	500	500	500	250	250	250	250

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- a – The minimum visibility zone, an area in which marine mammals must be able to be visually detected, extends 2.0 km.*
- b – Dominion Energy may request modification of these zones based on the results of sound field verification.*
- c – To align with the regulatory text, NMFS has added a 10 km PAM monitoring zone for all species.*
- d - This zone applies to both visual and PAM.*

TABLE 27—DISTANCES TO MITIGATION ZONES DURING NEARSHORE CABLE LANDFALL ACTIVITIES
[Temporary Cofferdams]

Marine mammals	Installation and removal of temporary cofferdams	
	Clearance zone (m)	Shutdown zone (m)
North Atlantic right whale—visual detection	Any distance	
All other Mysticetes and sperm whales	1,000	1,000
Delphinids	250	100
Pilot whales	1,000	1,000
Harbor porpoises	250	100
Seals	250	100

TABLE 28—DISTANCES TO MITIGATION ZONES DURING NEARSHORE CABLE LANDFALL ACTIVITIES
[Temporary goal posts]

Marine mammals	Installation and removal of temporary goal posts	
	Clearance zone (m)	Shutdown zone (m)
North Atlantic right whale—visual detection	Any distance	
All other Mysticetes and sperm whales	1,000	1,000
Delphinids	250	100
Pilot whales	1,000	1,000
Harbor porpoises	750	100
Seals	500	100

TABLE 29—DISTANCES TO THE MITIGATION ZONES DURING HRG SURVEYS

Marine mammals	HRG surveys	
	Clearance zone (m)	Shutdown zone (m)
North Atlantic right whale—visual detection	500	500
Endangered species (excluding North Atlantic right whales)	500	500
All other marine mammals ^a	100	100

^a Exceptions are noted for delphinids from genera *Delphinus*, *Lagenorhynchus*, *Stenella*, *Tursiops*, and both seal species.

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. Dominion Energy must utilize a soft-start protocol for impact pile driving of foundation piles (monopiles and pin piles). 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. NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers and installation conditions.

However, Dominion Energy's engineers have expressed concern with this approach as it could potentially damage the impact pile driving hammer. As such, specific soft start protocols considering final design details, including site-specific soil properties and other considerations, will be incorporated into the LOA, if issued. Dominion Energy, with approval from NMFS, may also modify the soft start procedures through adaptive management.

HRG survey operators are required to ramp-up sources when the acoustic sources are used unless the equipment operates on a binary on/off switch. The ramp-up would involve starting from the smallest setting to the operating level over a period of approximately 30 minutes. No soft-start or ramp-up is required for nearshore cable landfall activities given the type of activity (*i.e.*, vibratory pile driving for cofferdams)

and the short duration of the activity (*i.e.*, impact pile driving of goal posts).

Where required, 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 Dominion Energy's fishery monitoring surveys impacting marine mammals is minimal, NMFS requires Dominion Energy to adhere to gear and vessel mitigation measures to reduce potential impacts to the extent practicable. In addition, all crew undertaking the fishery monitoring survey activities are required to receive protected species identification training prior to activities occurring and attend

the aforementioned onboarding training. The specific requirements that NMFS has set for the fishery monitoring surveys can be found in the regulatory text at the end of this rulemaking.

Based on our evaluation of the mitigation measures, as well as other measures considered by NMFS, NMFS has determined that these measures will provide the means of affecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

As noted in the Changes From the Proposed to Final Rule section, we have added, modified, or clarified a number of monitoring and reporting measures since the proposed rule. These changes are described in detail in the sections below and, otherwise, the marine mammal monitoring and reporting requirements have not changed since the proposed rule.

In order to promulgate a rulemaking for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and/or

- Mitigation and monitoring effectiveness.

Separately, monitoring is also regularly used to support mitigation implementation, which is referred to as mitigation monitoring, and monitoring plans typically include measures that both support mitigation implementation and increase our understanding of the impacts of the activity on marine mammals.

During the planned activities, visual monitoring by NMFS-approved PSOs would be conducted before, during, and after all impact pile driving, vibratory pile driving, and HRG surveys. PAM would also be conducted during foundation pile driving. Visual observations and acoustic detections would be used to support the activity-specific mitigation measures (e.g., clearance zones). To increase understanding of the impacts of the activity on marine mammals, PSOs must record all incidents of marine mammal occurrence at any distance from the foundation piling locations and near the HRG acoustic sources. PSOs would document all behaviors and behavioral changes, in concert with distance from an acoustic source. The required monitoring is described below, beginning with PSO measures that are applicable to all the aforementioned activities, followed by activity-specific monitoring requirements.

Protected Species Observer (PSO) and Passive Acoustic Monitoring (PAM) Operator Requirements

Dominion Energy is required to employ NMFS-approved PSOs and PAM operators. PSOs are trained professionals who are tasked with visual 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 Dominion Energy to conduct PAM by PAM operators during foundation pile

driving and vessel transit. The inclusion of PAM, which would be conducted by NMFS-approved PAM operators, following a standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind, alongside visual data collection is valuable to provide the most accurate record of species presence as possible and, together, these two monitoring methods are well understood to provide best results when combined (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 with required shutdowns helps to further reduce the risk of marine mammals being exposed to sound levels that could otherwise result in acoustic injury or more intense behavioral harassment.

The exact configuration and number of PAM systems depends on the size of the zone(s) being monitored, the amount of noise expected in the area, and the characteristics of the signals being monitored. More closely spaced hydrophones would allow for more directionality, and perhaps, range to the vocalizing marine mammals; although, this approach would add additional costs and greater levels of complexity to the project. Larger baleen cetacean species (*i.e.*, mysticetes), which produce loud and lower-frequency vocalizations, may be able to be heard with fewer hydrophones spaced at greater distances. However, smaller cetaceans (such as mid-frequency delphinids (odontocetes)) may necessitate more hydrophones and to be spaced closer together given the shorter range of the shorter, mid-frequency acoustic signals (e.g., whistles and echolocation clicks). As there are no “perfect fit” single-optimal-array configurations, these set-ups would need to be considered on a case-by-case basis.

NMFS does not formally administer any PSO or PAM operator training program or endorse specific providers, but will approve PSOs and PAM operators that have successfully completed courses that meet the curriculum and trainer requirements referenced below and further specified in the regulatory text at the end of this rulemaking.

NMFS will provide PSO and PAM operator approvals in the context of the need to ensure that PSOs and PAM operators have the necessary training and/or experience to carry out their duties competently. In order for PSOs

and PAM operators to be approved, NMFS must review and approve PSO and PAM operator resumes indicating successful completion of an acceptable training course. PSOs and PAM operators must have previous experience observing marine mammals and must have the ability to work with all required and relevant software and equipment. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditional approval may be given to one who is trained but has not yet attained the requisite experience. An unconditional approval is given to one who is trained and has attained the necessary experience. The specific requirements for conditional and unconditional approval can be found in the regulatory text at the end of this rulemaking.

Conditionally-approved PSOs and PAM operators would be paired with an unconditionally-approved PSO (or PAM operator, as appropriate) to ensure that the quality of marine mammal observations and data recording is kept consistent. Additionally, activities requiring PSO and/or PAM operator monitoring must have a lead on duty. The visual PSO field team, in conjunction with the PAM team (*i.e.*, marine mammal monitoring team), would have a lead member (designated as the "Lead PSO") 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. Dominion Energy 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 Dominion Energy at least 30 days prior to the start of the project. Should Dominion Energy require additional PSOs or PAM operators throughout the project, Dominion Energy must submit a subsequent list of pre-approved PSOs and PAM operators to NMFS at least 15 days prior to planned use of that PSO or PAM operator. A PSO may be trained and/or experienced as both a PSO and PAM operator and may perform either duty, pursuant to scheduling requirements (and vice versa).

A minimum number of PSOs would be required to actively observe for the presence of marine mammals during certain project activities with more PSOs required as the mitigation zone

sizes increase. A minimum number of PAM operators would be required to actively monitor for the presence of marine mammals during foundation installation. The types of equipment required (*e.g.*, big eyes on the pile driving vessel) are also designed to increase marine mammal detection capabilities. Specifics on these types of requirements can be found in the regulations at the end of this rulemaking. In summary, at least three PSOs and one PAM operator per acoustic data stream (equivalent to the number of acoustic buoys) must be on-duty and actively monitoring per platform during foundation installation; at least two PSOs must be on duty during cable landfall construction impact vibratory pile installation and removal (temporary cofferdams and temporary goal posts); at least one PSO must be on-duty during HRG surveys conducted during daylight hours; and at least two PSOs must be on-duty during HRG surveys conducted during nighttime.

In addition to monitoring duties, PSOs and PAM operators are responsible for data collection. The data collected by PSO and PAM operators and subsequent analysis provide the necessary information to inform an estimate of the amount of take that occurred during the project, better understand the impacts of the project on marine mammals, address the effectiveness of monitoring and mitigation measures, and to adaptively manage activities and mitigation in the future. Data reported includes information on marine mammal sightings, activity occurring at time of sighting, monitoring conditions, and if mitigative actions were taken. Specific data collection requirements are contained within the regulations at the end of this rulemaking.

Dominion Energy is required to submit a Pile Driving Marine Mammal Monitoring Plan and a PAM Plan to NMFS 180 days in advance of foundation installation activities. The Plan must include details regarding PSO and PAM monitoring protocols and equipment proposed for use. More specifically, the PAM Plan must include a description of all proposed PAM equipment, address how the proposed passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind as described in *NOAA and BOEM Minimum Recommendations for Use of Passive Acoustic Listening Systems in Offshore Wind Energy Development Monitoring and Mitigation Programs* (Van Parijs *et al.*, 2021). NMFS must

approve the plan prior to foundation installation activities commencing. Specific details on NMFS' PSO or PAM operator qualifications and requirements can be found in Part 217—Regulations Governing The Taking And Importing Of Marine Mammals at the end of this rulemaking. Additional information can be found in Dominion Energy's PSMMP found with their ITA application on NMFS' website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

Sound Field Verification (SFV)

Dominion Energy must conduct SFV measurements for all foundation pile-driving activities associated with the installation of, at minimum, the first 3 monopile foundations, and for all 3 jacket foundations used for OSS, assuming all 12 pin piles are installed ($n=4$ pin piles per OSS). SFV measurements must continue until at least three consecutive monopiles demonstrate distances to thresholds are at or below those modeled, assuming 10 dB of attenuation. Subsequent SFV measurements are also required should larger piles be installed, or additional piles be driven that are anticipated to produce longer distances to harassment isopleths than those previously measured (*e.g.*, higher hammer energy, greater number of strikes, *etc.*). The measurements and reporting associated with SFV can be found in the regulatory text at the end of this rulemaking. The requirements are extensive to ensure monitoring is conducted appropriately and the reporting frequency is such that Dominion Energy 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 the ISO 18406 *Underwater acoustics—Measurement of radiated underwater sound from percussive pile driving* (International Organization for Standardization, 2017).

Reporting

Prior to any construction activities occurring, Dominion Energy would provide a report to NMFS Office of Protected Resources that demonstrates that all Dominion Energy personnel, including the vessel crews, vessel captains, PSOs, and PAM operators, have completed all required trainings.

NMFS would require standardized and frequent reporting from Dominion Energy during the life of the regulations and LOA. All data collected relating to the Project would be recorded using industry-standard software (e.g., Mysticetus or a similar software) installed on field laptops and/or tablets. Dominion Energy is required to submit weekly, monthly, annual, and situational reports. The specifics of what we require to be reported can be found in the regulatory text at the end of this final rule.

Weekly Report—During foundation installation activities, Dominion Energy would be required to compile and submit weekly marine mammal monitoring reports for foundation installation pile driving to NMFS Office of Protected Resources that document the daily start and stop of all pile-driving activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals (acoustic and visual), any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the noise abatement system(s) (e.g., system type, distance deployed from the pile, bubble rate, etc.). Weekly reports will be due on Wednesday for the previous week (Sunday 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—Dominion Energy is required to compile and submit monthly reports to NMFS Office of Protected Resources that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, all detections of marine mammals, and any mitigative actions taken. Monthly reports would be due on the 15th of the month for the previous month. The monthly report would also identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, monthly reports would no longer be required.

Annual Reporting—Dominion Energy is required to submit an annual marine mammal monitoring (both PSO and PAM) report to NMFS Office of Protected Resources no later than 90 days following the end of a given calendar year describing, in detail, all of the information required in the monitoring section above. A final annual report must be prepared and

submitted within 30 calendar days following receipt of any NMFS comments on the draft report.

Final 5-Year Reporting—Dominion Energy must submit its draft 5-year report(s) to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted under the LOA within 90 calendar days of the completion of activities occurring under the LOA. A final 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS comments on the draft report. Information contained within this report is described at the beginning of this section.

Situational Reporting—Specific situations encountered during the development of the Project 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 would be reported to NMFS Office of Protected Resources, the NMFS Greater Atlantic Stranding Coordinator for the New England/Mid-Atlantic area (866-755-6622), and the U.S. Coast Guard within 24 hours. If the injury or death was caused by a project activity, Dominion Energy must immediately cease all activities until NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Dominion Energy may not resume their activities until notified by NMFS Office of Protected Resources.

In the event of a vessel strike of a marine mammal by any vessel associated with the Project, Dominion Energy must immediately report the strike incident. If the strike occurs in the Greater Atlantic Region (Maine to

Virginia), Dominion Energy must call the NMFS Greater Atlantic Stranding Hotline. Separately, Dominion Energy must also and immediately report the incident to NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office (GARFO). Dominion Energy must immediately cease all on-water activities until NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Dominion Energy may not resume their activities until notified by NMFS.

In the event of any lost gear associated with the fishery surveys, Dominion Energy must report to the GARFO as soon as possible or within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

The specifics of what NMFS Office of Protected Resources requires to be reported is listed at the end of this rulemaking in the regulatory text.

Sound Field Verification—Dominion Energy is required to submit interim SFV reports after each foundation installation as soon as possible but within 48 hours. A final SFV report for all monopile foundation installation would be required within 90 days following completion of acoustic monitoring.

Adaptive Management

The regulations governing the take of marine mammals incidental to Dominion Energy's construction activities contain an adaptive management component. Our understanding of the effects of offshore wind construction activities (e.g., acoustic and explosive stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations.

The monitoring and reporting requirements in this final rule provide NMFS with information that helps us to better understand the impacts of the project's activities on marine mammals and informs our consideration of whether any changes to mitigation and monitoring are appropriate.

The use of adaptive management allows NMFS to consider new information and modify mitigation,

monitoring, or reporting requirements, as appropriate, with input from Dominion Energy regarding practicability, if such modifications will have a reasonable likelihood of more effectively accomplishing the goal of the measures. The following are some of the possible sources of new information to be considered through the adaptive management process: (1) results from monitoring reports, including the weekly, monthly, situational, and annual reports required; (2) results from marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA. During the course of the rule, Dominion Energy (and other LOA Holders conducting offshore wind development activities) are required to participate in one or more adaptive management meetings convened by NMFS and/or BOEM, in which the above information will be summarized and discussed in the context of potential changes to the mitigation or monitoring measures.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” by mortality, serious injury, Level A harassment and Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.*, intensity, duration), the context of any such responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status

of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

In the Estimated Take section, we discuss the estimated maximum number of takes by Level A harassment and Level B harassment that could occur incidental to Dominion Energy’s specified activities based on the methods described. The impact that any given take would have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.*, the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). In this final rule, we evaluate the likely impacts of the enumerated harassment takes that are authorized in the context of the specific circumstances surrounding these predicted takes. We also collectively evaluate this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock. As described above, no serious injury or mortality is expected or authorized for any species or stock.

The Description of the Specified Activities section of this preamble describes Dominion Energy’s specified activities that may result in take of marine mammals and an estimated schedule for conducting those activities. Dominion Energy has provided a realistic construction schedule (*e.g.*, Dominion Energy’s schedule reflects the maximum number of piles they anticipate to be able to drive each month in which pile driving is authorized to occur), although we recognize schedules may shift for a variety of reasons (*e.g.*, weather or supply delays). However, the total number of takes would not exceed the 5-year totals and maximum annual total in any given year indicated in Tables 23 and 24, respectively.

We base our analysis and negligible impact determination on the maximum number of takes that could occur and are authorized annually and across the effective period of these regulations and extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals and the number and context of the individuals affected. As stated before, the number of takes, both maximum annual and 5-year total, alone are only a part of the analysis.

To avoid repetition, we provide some general analysis in this Negligible Impact Analysis and Determination

section that applies to all the species listed in Table 2, given that some of the anticipated effects of Dominion Energy’s construction activities on marine mammals are expected to be relatively similar in nature. Then, we subdivide into more detailed discussions for mysticetes, odontocetes, and pinnipeds, which have broad life-history traits that support an overarching discussion of some factors considered within the analysis for those groups (*e.g.*, habitat-use patterns, high-level differences in feeding strategies).

Last, we provide a negligible impact determination for each species or stock, providing species or stock-specific information or analysis, where appropriate (*e.g.*, North Atlantic right whales given their population status). Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of Dominion Energy’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; however, the majority of the impacts are associated with WTG foundation and OSS foundation installation, which is scheduled to occur largely within the first 2 years (2024 through 2025) of the effective period of these regulations. The estimated take in the other years is expected to be notably less, which is reflected in the total take that would be allowable under the rule (see Tables 22, 23, and 24).

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). The number of takes by harassment Dominion Energy has requested and NMFS is authorizing is based on exposure models that consider the outputs of acoustic source and propagation models and other data such as frequency of occurrence or group sizes. Several conservative parameters and assumptions are ingrained into these models, such as assuming forcing functions that consider direct contact with piles (*i.e.*, no cushion allowances) and the broad application of an average seasonal sound speed profile (*i.e.*, between May 1st and October 31st) to all months within a given season based on the foundation pile driving period. The exposure model results do not reflect any mitigation measures (other

than 10 dB sound attenuation for foundation pile driving and spatio-temporal restrictions (*i.e.*, seasonal pile driving window; pile driving cannot start at night)) or avoidance response. The number of takes requested and authorized also reflects careful consideration of other data (*e.g.*, group size data) and for Level A harassment potential of some large whales, the consideration of mitigation measures. For all species, the number of takes authorized represents the maximum amount of Level A harassment and Level B harassment that could occur.

Behavioral Disturbance

In general, NMFS anticipates that impacts on an individual that has been harassed are likely to be more intense when exposed to higher received levels and for a longer duration (though this is in no way a strictly linear relationship for behavioral effects across species, individuals, or circumstances) and less severe impacts result when exposed to lower received levels and for a brief duration. However, there is also growing evidence of the importance of contextual factors such as distance from a source in predicting marine mammal behavioral response to sound—*i.e.*, sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter and Doukara, 2012; Falcone *et al.*, 2017). As described in the Potential Effects to Marine Mammals and their Habitat section of the proposed rule, the intensity and duration of any impact resulting from exposure to Dominion Energy's activities is dependent upon a number of contextual factors including, but not limited to, sound source frequencies, whether the sound source is moving towards the animal, hearing ranges of marine mammals, behavioral state at time of exposure, status of individual exposed (*e.g.*, reproductive status, age class, health) and an individual's experience with similar sound sources. Southall *et al.* (2021), Ellison *et al.* (2012) and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.*, behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources. Harassment of marine mammals may result in behavioral modifications (*e.g.*, avoidance, temporary cessation of foraging or communicating, changes in respiration or group dynamics, masking) or may result in auditory impacts such as hearing loss. In addition, some of the lower-level physiological stress responses (*e.g.*, change in respiration,

change in heart rate) discussed previously would likely co-occur with the behavioral modifications, although these physiological responses are more difficult to detect, and fewer data exist relating these responses to specific received levels of sound. Takes by Level B harassment, then, may have a stress-related physiological component as well; however, we would not expect Dominion Energy's activities to produce conditions of long-term and continuous exposure to noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

In the range of behavioral effects that might be expected to be part of a response that qualifies as an instance of Level B harassment by behavioral disturbance (which by nature of the way it is modeled/counted, occurs within 1 day), the less severe end might include exposure to comparatively lower levels of a sound, at a greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time or breaking off one or a few feeding bouts. More severe effects could occur if an animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. However, such severe behavioral effects are expected to occur infrequently.

Many species perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than 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 (up to 40 m) and deep diving species, such as sperm whales, are not expected to be engaging in deep foraging dives when exposed to noise above NMFS harassment thresholds during the specified activities. Therefore, we do not anticipate impacts

to deep foraging behavior to be impacted by the specified activities.

It is also important to identify that the estimated number of takes does not necessarily equate to the number of individual animals Dominion Energy expects to harass (which is lower) but rather to the instances of take (*i.e.*, exposures above the Level B harassment thresholds) that may occur. These instances may represent either brief exposures for HRG surveys, or, in some cases, longer durations of exposure within a day (*e.g.*, pile driving). Some members of a species or stock may experience one exposure as they move through an area while other individuals of a species may experience recurring instances of take over multiple days throughout the year while, in which case the number of individuals taken is smaller than the total estimated takes. In short, for species that are more likely to be migrating through the area and/or for which only a comparatively smaller number of takes are predicted (*e.g.*, some of the mysticetes), it is more likely that each take represents a different individual whereas for non-migrating species with larger amounts of predicted take, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be taken across multiple days.

For Dominion Energy, impact pile driving of foundation piles is most likely to result in a higher magnitude and severity of behavioral disturbance than other activities (*i.e.*, vibratory pile driving, HRG surveys). Impact pile driving has higher source levels and longer durations (on an annual basis) than vibratory pile driving and HRG surveys. HRG survey equipment also produces much higher frequencies than pile driving, resulting in minimal sound propagation and associated exposure. While impact pile driving for foundation installation is anticipated to be most impactful for these reasons, impacts are minimized, to the extent practicable, through implementation of mitigation measures, including use of a sound attenuation system, soft-starts, the implementation of clearance zones that would facilitate a delay to pile-driving commencement, and implementation of shutdown zones. For example, given sufficient notice through the use of soft-start, marine mammals are expected to move away from a sound source that is disturbing prior to becoming exposed to very loud noise levels. The requirement to couple visual monitoring and PAM before and during all foundation installation will increase the overall capability to detect marine mammals compared to one method 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 is in the form of a longer (several hours or a day) and more severe response, if they are not expected to be repeated over numerous or sequential days, impacts to individual fitness are not anticipated. Also, the effect of disturbance is strongly influenced by whether it overlaps with biologically important habitats when individuals are present—avoiding biologically important habitats will provide opportunities to compensate for reduced or lost foraging (Keen *et al.*, 2021). Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.*, 2018; Harris *et al.*, 2017; King *et al.*, 2015; National Academy of Science, 2017; New *et al.*, 2014; Southall *et al.*, 2007; Villegas-Amtmann *et al.*, 2015).

Temporary Threshold Shift (TTS)

TTS is one form of Level B harassment that marine mammals may incur through exposure to Dominion Energy's activities and, as described earlier, the authorized takes by Level B harassment may represent takes in the form of behavioral disturbance, TTS, or both. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the proposed rule (88 FR 28656, May 4, 2023), in general, TTS can last from a few minutes to days, be of varying degree, and occur across different frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Impact and vibratory pile driving generate sounds in the lower frequency ranges (with most of the energy below 1–2 kHz but with a small amount of energy ranging up to 20 kHz); therefore, in general and all else being equal, we anticipate the potential for TTS is higher in low-frequency cetaceans (*i.e.*, mysticetes) than other marine mammal hearing groups and is more likely to occur in frequency bands in which they communicate. 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 Dominion Energy'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 for all species.

Generally, both the degree of TTS and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher, or the duration is longer). The threshold for the onset of TTS was discussed previously (see the Estimated Take section of this preamble). However, source level is not the sole predictor of TTS. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the required mitigation and the nominal speed of the receiving animal relative to the stationary sources such as impact pile driving. The recovery time of TTS is also of importance when considering the potential impacts from TTS. In TTS laboratory studies (as discussed in the Potential Effects of the Specified Activities on Marine Mammals and their Habitat section of the proposed rule (88 FR 28656, May 4, 2023)), 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 (PTS)

NMFS is authorizing a very limited number (*i.e.*, single digits annually) of takes by PTS to some marine mammal individuals. The numbers of authorized annual takes by Level A harassment are relatively low for all marine mammal stocks and species (Table 23). The only activities 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 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 anticipate a similar result for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS.

Any PTS incurred from these activities 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 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. 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. For these reasons, any PTS incurred as a result of exposure to these activities is not expected to impact the reproduction or survival of any individuals.

Auditory Masking or Communication Implications

The ultimate potential impacts of masking on an individual are similar to those discussed for TTS (*e.g.*, decreased ability to communicate, forage effectively, or detect predators), but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Also, though, masking can result from the sum of exposure to multiple signals, none of which might individually cause TTS. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is

occurring. Inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency.

As our analysis for this project has indicated, we expect that impact pile driving foundations have the greatest potential to mask marine mammal signals, and this pile driving may occur for several, albeit intermittent, hours per day, for multiple days per year. Masking is fundamentally more of a concern at lower frequencies (which are pile-driving dominant frequencies), because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower low frequency calls of mysticetes, as well as many non-communication cues related to fish and invertebrate prey, and geologic sounds that inform navigation. However, the area in which masking would occur for all marine mammal species and stocks (e.g., predominantly in the vicinity of the foundation pile being driven) is small relative to the extent of habitat used by each species and stock. In summary, the nature of Dominion Energy's activities, paired with habitat use patterns by marine mammals, does not support the likelihood that the level of masking that could occur would have the potential to affect reproductive success or survival.

Impacts on Habitat and Prey

Construction activities may result in fish and invertebrate mortality or injury very close to the source, and all of Dominion Energy's activities may cause some fish to leave the area of disturbance. It is anticipated that any mortality or injury would be limited to a very small subset of available prey and the implementation of mitigation measures such as the use of a noise attenuation system (i.e., a double bubble curtain) during impact pile driving 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; however, due to the relatively small area of the habitat that may be affected at any given time (e.g., around a pile being driven), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Cable presence is not anticipated to impact marine mammal habitat as these would be buried, and any

electromagnetic fields emanating from the cables are not anticipated to result in consequences that would impact marine mammals prey to the extent they would be unavailable for consumption.

The presence of wind turbines within the Lease Area could have longer-term impacts on marine mammal habitat, as the project would result in the persistence of the structures within marine mammal habitat for more than 30 years. The presence of structures such as wind turbines is, in general, likely to result in certain oceanographic effects in the marine environment and may alter aggregations and distribution of marine mammal zooplankton prey through changing the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.*, 2021; Johnson *et al.*, 2021; Christiansen *et al.*, 2022; Dorrell *et al.*, 2022).

As discussed in the Potential Effects of the Specified Activities on Marine Mammals and their Habitat section of the proposed rule (88 FR 28656, May 4, 2023), the project would consist of no more than 179 foundations (176 WTGs and 3 OSSs) 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 CVOW-C Project, meaningful oceanographic impacts relative to stratification and mixing that would significantly affect marine mammal habitat and prey over large areas in key foraging habitats during the effective period of the regulations are not anticipated (which considers 2–3 years of turbine operation). For these reasons, if oceanographic features are affected by the project during the effective period of the regulations, the impact on marine mammal habitat and their prey is likely to be comparatively minor.

The CVOW-C Biological Opinion provided an evaluation of the presence and operation of the Project on, among other species, marine mammals and their prey (see <https://repository.library.noaa.gov/view/noaa/55495>). While the consultation considered the life of the project (approximately 33 years), we considered the potential for the habitat and prey impacts to occur within the 5-year effective time frame of this rule. Overall, the Biological Opinion concluded that impacts from loss of sandy bottom habitat (from the presence of turbines and placement of scour protection) as well as any beneficial reef effects are expected to be so small that they cannot be meaningfully measured, evaluated, or detected, and are therefore

insignificant. The Biological Opinion also concluded that the presence and operation of the wind farm may change the distribution of plankton within the wind farm, but these changes are not expected to affect the oceanographic forces transporting zooplankton into the area. Therefore, the Biological Opinion concluded that the overall reduction in biomass of plankton is not an anticipated outcome of operating the Project. Thus, because changes in the biomass of zooplankton are not anticipated, any higher trophic level impacts are also not anticipated. That is, no effects to pelagic fish or benthic invertebrates that depend on plankton as forage food are expected to occur. Zooplankton, fish, and invertebrates are all considered marine mammal prey and, as fully described in the Biological Opinion, measurable, detectable, or significant changes to marine mammal prey abundance and distribution from wind farm operation are not anticipated.

Mitigation To Reduce Impacts on All Species

This rulemaking includes a variety of mitigation measures designed to minimize to the extent practicable impacts on all marine mammals, with a focus on North Atlantic right whales (the latter is described in more detail below). For the dual approach of vibratory and impact pile driving of foundation piles, ten overarching measures are required, which are intended to reduce both the number and intensity of marine mammal takes: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within specifically designated zones that would trigger 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 (i.e., double bubble curtain); (8) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Dominion Energy personnel must be reported to PSOs; (9) sound field verification monitoring; and (10) Vessel Strike Avoidance measures to reduce the risk of a collision with a marine mammal and vessel. For temporary cofferdam and goal post installation and removal, we are requiring five overarching measures: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually

observe for marine mammals (with any detection with specifically designated zones that would trigger a delay or shutdown); (3) implementation of clearance zones; (4) implementation of shutdown zones; and (5) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Dominion Energy personnel must be reported to PSOs. Lastly, for HRG surveys, we are requiring six measures: (1) measures specifically for Vessel Strike Avoidance; (2) specific requirements during daytime and nighttime 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 Dominion Energy personnel must be reported to PSOs.

NMFS prescribes mitigation measures based on the following rationale. For activities with large harassment isopleths, Dominion Energy is committed to reducing the noise levels generated to the lowest levels practicable and is required to ensure that they do not exceed a noise footprint above that which was modeled, assuming a 10-dB attenuation. Use of a soft-start during impact pile driving will allow animals to move away from (*i.e.*, avoid) the sound source prior to applying higher hammer energy levels needed to install the pile (Dominion Energy will not use a hammer energy greater than necessary to install piles). Similarly, ramp-up during HRG surveys would 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 and OSS foundation installation, temporary cofferdam and goal post installation and removal, HRG surveys), PAM operators (for foundation installation), and maintaining awareness of marine mammal sightings reported in the region (WTG and OSS foundation installation, temporary cofferdam and goal post installation and removal, HRG surveys) will aid in detecting marine mammals that would trigger the implementation of the mitigation measures. The reporting requirements including SFV reporting (for foundation installation 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, fin whale, humpback whale, minke whale, and sei whale) may be taken by harassment. These species, to varying extents, utilize the specified geographic region, including the Project Area, for the purposes of migration, foraging, and socializing. Mysticetes are in the low-frequency hearing group.

Behavioral data on mysticete reactions to pile-driving noise are scant. Kraus *et al.* (2019) predicted that the three main impacts of offshore wind farms on marine mammals would consist of displacement, behavioral disruptions, and stress. Broadly, we can look to studies that have focused on other noise sources such as seismic surveys and military training exercises, which suggest that exposure to loud signals can result in avoidance of the sound source (or displacement if the activity continues for a longer duration in a place where individuals would otherwise have been staying, which is less likely for mysticetes in this area), disruption of foraging activities (if they are occurring in the area), local masking around the source, associated stress responses, and impacts to prey, as well as TTS or PTS in some cases.

Mysticetes encountered in the Project Area are expected to primarily be migrating and may be engaged in opportunistic foraging behaviors. 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 ground 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, the very short duration of and broad availability of prey species in the area and the availability of alternative suitable foraging habitat for the mysticete species most likely to be affected, any impacts on mysticete foraging are expected to be minor. Whales that choose to opportunistically forage and are temporarily displaced from the Project Area are expected to have sufficient remaining similar

feeding habitat available to them in the area and, further, 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 opportunistic foraging bouts would be expected to be relatively temporary in nature.

The potential for repeated exposures is dependent upon the residency time of whales, with migratory animals unlikely to be exposed on repeated occasions and animals remaining in the area to be more likely exposed repeatedly. For mysticetes, where relatively low numbers of species-specific take by Level B harassment are predicted (compared to the abundance of each mysticete species or stock, such as is indicated in Table 23) 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 is not be expected to impact reproduction or survival. Species with longer residence time in the Project Area may be subject to repeated exposures across multiple days.

In general, for this project, the duration of exposures would not be continuous throughout any given day, and pile driving would not occur on all consecutive days within a given year due to weather delays or any number of logistical constraints Dominion Energy 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 (refer back to Table 23). As described previously, PTS for mysticetes from impact pile driving may overlap frequencies used for communication, navigation, or detecting prey. However, given the nature and duration of the activity, the mitigation measures, and likely avoidance behavior, any PTS is expected to be of a small degree, would be limited to frequencies where pile-driving noise is concentrated (*i.e.*, only a small subset of their expected hearing range) and would not be expected to impact reproductive success or survival.

North Atlantic Right Whale

North Atlantic right whales are listed as endangered under the ESA, and the western Atlantic stock is considered depleted and strategic under the MMPA.

As described in the Potential Effects to Marine Mammals and Their Habitat section of the proposed rule (88 FR 28656, May 4, 2023), North Atlantic right whales are threatened by a low population abundance, higher than average mortality rates, and lower than average reproductive rates. Recent studies have reported individuals showing high stress levels (*e.g.*, Corkeron *et al.*, 2017) and poor health, which has further implications on reproductive success and calf survival (Christiansen *et al.*, 2020; Stewart *et al.*, 2021; Stewart *et al.*, 2022). As described below, a UME has been designated for North Atlantic right whales. Given this, the status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis and consideration. No injury or mortality is anticipated or authorized for this species.

For North Atlantic right whales, this rule authorizes up to 17 takes, by Level B harassment only, over the 5-year period, with a maximum annual allowable take of 7 (equating to approximately 2.07 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). 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 low number of total takes, we anticipate that few, if 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. While opportunistic foraging may occur in the Project area, the habitat does not support prime foraging habitat.

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. Northward migration occurs mainly during the months of March and April while southern transit typically takes place during the months of November and December (LaBrecque *et al.*, 2015; Van Parijs *et al.*, 2015). Overall, the Project Area contains habitat less frequently utilized by North Atlantic right whales than the foraging and calving grounds. Salisbury *et al.* (2015) detected North Atlantic right whales year-round off the coast of Virginia, yet they were only detected on 10 percent of the days from May through October. The greatest detections occurred from October through December through March, outside of the

months of Dominion Energy's planned foundation installation. Therefore, we anticipate that any individual whales would typically be migrating through the Project Area and would not be lingering for extended periods of time and, further, fewer would be present in the months when foundation installation would be occurring. Other activities planned by Dominion Energy involve either much smaller harassment zones (*i.e.*, HRG surveys) or are limited in amount and nearshore in location (*i.e.*, cable landfall construction) but may occur during periods when North Atlantic right whales are more likely to be migrating through the Project Area. As any North Atlantic right whales within the Project Area would likely be engaged in migratory behavior (LaBrecque *et al.*, 2015), it is likely that the authorized instances of take would occur to separate individual whales; however, some may be repeat takes of the same animal across multiple days for some short period of time. The only activity occurring from December through May that may impact North Atlantic right whale would be HRG surveys; no take from cable landfall construction is anticipated or authorized. Across all years, while it is possible an animal could have been exposed during a previous year, the low number of takes authorized during the 5-year effective period of the final rulemaking makes this scenario possible but unlikely ($n=17$). However, if an individual were to be exposed during a subsequent year, the impact of that exposure is likely independent of the previous exposure given the duration between exposures.

North Atlantic right whales utilize areas outside of the Project Area for their main 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 either much smaller harassment zones (*e.g.*, HRG surveys) or is limited in amount (*e.g.*, cable landfall construction) 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 November through May that may impact North Atlantic right whale would be primarily

HRG surveys, which 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 Specified Geographic Region section, North Atlantic right whales are presently experiencing an ongoing UME (beginning in June 2017). Preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. Given the current status of the North Atlantic right whale, the loss of even one individual could significantly impact the population. No mortality, serious injury, or injury of North Atlantic right whales as a result of the project is expected or authorized. Any disturbance to North Atlantic right whales due to Dominion Energy's activities is expected to result in temporary avoidance of the immediate area of construction. As no injury, serious injury, or mortality is expected or authorized, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of mitigation measures, the authorized number of takes of North Atlantic right whales would not exacerbate or compound the effects of the ongoing UME.

As described in the general *Mysticetes* section above, foundation installation is likely to result in the highest number of annual takes and is of greatest concern given loud source levels. This activity is expected to consist of approximately 213 days over a maximum of 2 years, assuming up to 30 days necessary for all 3 OSS foundations to be installed and assuming that a single WTG monopile ($n=176$ WTG foundations) is installed per day (*i.e.*, 24-hour period), which we do acknowledge is not the case as Dominion Energy would, on some days, install up to 2 WTG monopile foundations, which would reduce this overall estimate. We also acknowledge that this estimate represents 183 pile driving events, not WTGs planned to be installed, which slightly overestimates the total number of pile driving days likely necessary. In all cases, these activities would only occur 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). The effects of the activities are expected to be sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors such as 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., many individuals would not be impacted on more than 1 day in a year), with some subset potentially being exposed on no more than a few days within the year, they are unlikely to result in energetic consequences that could affect reproduction or survival of any individuals.

Overall, NMFS expects that any behavioral harassment of North Atlantic right whales incidental to the specified activities would not result in changes to their migration patterns or foraging success, as only temporary avoidance of an area during construction is expected to occur. As described previously, North Atlantic right whales 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 opportunistically 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 would be rare, given pile driving is 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, the anticipated mitigation effectiveness, and the 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 to Marine Mammals and Their Habitat section of the proposed rule (88 FR 28656, May 4, 2023), 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 to Marine Mammals and Their Habitat section of the proposed rule (88 FR 28656, May 4, 2023), we anticipate that course diversion would be of small magnitude. Hence, while some avoidance of the pile-driving activities may occur, we anticipate any avoidance behavior of migratory North Atlantic right whales would be similar to that of gray whales (Tyack *et al.*, 1983), on the order of hundreds of meters up to 1 to 2 km. This diversion from a migratory path otherwise uninterrupted by the project's activities is not expected to result in meaningful energetic costs that would impact annual rates of recruitment 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, NMFS is requiring a suite of mitigation measures designed to reduce impacts to North Atlantic right whales to the maximum extent practicable. These mitigation measures (e.g., seasonal/daily work restrictions, vessel

separation distances, reduced vessel speed) would not only avoid the likelihood of vessel strikes but also would minimize the severity of behavioral disruptions by minimizing impacts (e.g., through sound reduction using attenuation systems and reduced spatio-temporal overlap of project activities and North Atlantic right whales). This would further ensure that the number of takes by Level B harassment that are estimated to occur are not expected to affect reproductive success or survivorship by detrimental impacts to energy intake or cow/calf interactions during migratory transit. However, even in consideration of recent habitat-use and distribution shifts, Dominion Energy would still be installing foundations when the presence of North Atlantic right whales is expected to be lower.

As described in the Description of Marine Mammals in the Specified Geographic Region section, Dominion Energy would be constructed within the North Atlantic right whale migratory corridor BIA, which represent areas and months within which a substantial portion of a species or population is known to migrate. The Lease Area is relatively small compared with the migratory BIA area (approximately 456.5 km² for OCS-A 0483 versus the size of the full North Atlantic right whale migratory BIA, 269,448 km²). Further, the BIA is approximately 177 km (110 mi) in width (west to east), when measured at the widest point beginning just off the Virginia coastline. The Lease Area begins approximately 44 km (27.3 mi) east of Virginia Beach, Virginia, and is approximately 25 km (15.5 mi) in width from east to west (when measured horizontally). While construction activities would be occurring within the migratory path, its placement in deeper waters no closer than 44 km offshore and the fact the foundation installation (the most impactful activity) would not be occurring during the migration period (i.e., no foundation installation would occur November 1st through April 30th) provide high conservation benefits. Overall North Atlantic right whale migration is not expected to be impacted by the planned activities. 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 nearby habitats). Therefore, any impacts to prey that may occur are also unlikely to impact marine mammals.

The most significant measure to minimize impacts to individual North Atlantic right whales is the seasonal moratorium on all foundation installation activities from November 1st through April 30th 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 would be reduced due to the additional mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed.

Foundation pile driving may only begin in the absence of North Atlantic right whales (based on visual and passive acoustic monitoring). If foundation 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 and acoustically detected at any distance, unless a shutdown is not feasible due to risk of injury or loss of life. Shutdown may occur anywhere if North Atlantic right whales are seen within or beyond the Level B harassment zone, further minimizing the duration and intensity of exposure. NMFS anticipates that if North Atlantic right whales go undetected and they are exposed to foundation installation noise, it is unlikely a North Atlantic right whale would approach the sound source locations to the degree that they would purposely expose themselves to very high noise levels. This is because typical observed whale behavior demonstrates likely avoidance of harassing levels of sound where possible (Richardson *et al.*, 1985). These measures are designed to avoid PTS and also reduce the severity of Level B harassment, including the potential for TTS. While some TTS could occur, given the mitigation measures (e.g., delay pile driving upon a sighting or acoustic detection and shutting down upon a sighting or acoustic detection), the potential for TTS to occur is low.

The clearance and shutdown measures are most effective when detection efficacy is maximized, as the

measures are triggered by a sighting or acoustic detection. To maximize detection efficacy, NMFS requires the combination of PAM and visual observers. NMFS is requiring communication protocols with other project vessels, and other heightened awareness efforts (e.g., daily monitoring of North Atlantic right whale sighting databases) such that as a North Atlantic right whale approaches the source (and thereby could be exposed to higher noise energy levels), PSO detection efficacy would increase, the whale would be detected, and a delay to commencing foundation installation or shutdown (if feasible) would occur. In addition, the implementation of a soft-start for impact pile driving would provide an opportunity for whales to move away from the source if they are undetected, reducing received levels. Further, Dominion Energy has committed to not installing two WTG or OSS foundations simultaneously. North Atlantic right whales would, therefore, not be exposed to concurrent impact pile driving on any given day and the area ensonified at any given time would be limited. We further note that Dominion Energy will not be starting the installation of foundation piles at night.

Additionally, Dominion Energy anticipates a need to undertake a dual vibratory and impact pile driving approach for foundation piles to avoid risks associated with pile run due to softer sedimentation in the Project Area. While Dominion Energy expects that up to 70 percent of their piles may necessitate this joint approach (approximately 123 foundation piles), realistically not all piles would be at risk of pile run and would be installed, instead, by impact pile driving alone. However, as a conservative approach given uncertainty with the seabed conditions for the location of each pile, Dominion Energy assumed all foundation piles would undertake this approach. Furthermore, Dominion Energy has already stated that no concurrent installation of foundation piles is planned to occur, no concurrent vibratory and impact driving is expected to occur either as a 1.2-hour gap between the end vibratory driving to the start of impact pile driving (to allow for the moving and set-up of equipment) would treat each installation approach as a separate event and would not overlap.

Finally, for HRG surveys, the maximum distance to the Level B harassment threshold is 100 m. The estimated take, by Level B harassment only, associated with HRG surveys conservatively accounts for the

maximum number of North Atlantic right whale exposures that may occur when HRG acoustic sources are active. However, because of the short maximum distance to the Level B harassment threshold isopleth (100 m via the GeoMarine Dual 400 Sparker 800 J), 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 boomers, sparkers, and CHIRPs (if applicable) must be delayed during the clearance period if PSOs detect a North Atlantic right whale (or any other ESA-listed species) within 500 m of the acoustic source. With implementation of the mitigation requirements, take by Level A harassment is not anticipated and, therefore, not authorized. Potential impacts associated with Level B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior. Given the high level of precautions taken to minimize both the number and intensity of Level B harassment on North Atlantic right whales, it is unlikely that the anticipated low-level exposures would lead to reduced reproductive success or survival.

As described above, no serious injury or mortality, or Level A harassment, of North Atlantic right whale is anticipated or authorized. Extensive North Atlantic right whale-specific mitigation measures (beyond the robust suite required for all species) are expected to further minimize the number and severity of takes by Level B harassment. Given the documented habitat use within the area, the majority of the individuals predicted taken (including no more than 17 instances of take, by Level B harassment only, over the course of the 5-year rule, with an annual maximum of no more than 7) would be impacted on a maximum of 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; and, 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, Dominion

Energy's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by Level B harassment anticipated and authorized would have a negligible impact on the North Atlantic right whale stock.

Fin Whale

The fin whale is listed as Endangered under the ESA, and the western North Atlantic stock is considered both Depleted and Strategic under the MMPA. No UME has been designated for this species or stock. No serious injury or mortality is anticipated or authorized for this species.

The rule authorizes up to 215 takes, by harassment only, over the 5-year effective period of the rule. The maximum annual allowable take by Level A harassment and Level B harassment, would be 4 and 113, respectively (combined, this annual take ($n=117$) equates to approximately 1.72 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). The Project Area does not overlap with any known areas of specific biological importance to fin whales. It is likely that some subset of the individual whales exposed could be taken several times annually.

Level B harassment is expected to be in the form of behavioral disturbance, primarily resulting in avoidance of the Project Area where foundation installation is occurring, and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief periods of time. Any potential PTS would be minor (limited to a few dB) and any TTS would be of short duration and concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of fin whales.

Fin whales are present in the waters off of Virginia year-round and are one of the most frequently observed large whales and cetaceans in continental shelf waters, principally from Cape Hatteras in the Mid-Atlantic northward to Nova Scotia, Canada (Sergeant, 1977; Sutcliffe and Brodie, 1977; CETAP, 1982; Hain *et al.*, 1992; Geo-Marine, 2010; BOEM 2012; Edwards *et al.*, 2015; Hayes *et al.*, 2022). Fin whales have high relative abundance in the Mid-Atlantic and Project Area, most observations occur in the winter and

summer months (Geo-Marine, 2010; Hayes *et al.*, 2022) though detections do occur in spring and fall (Watkins *et al.*, 1987; Clark and Gagnon 2002; Geo-Marine, 2010; Morano *et al.*, 2012). However, fin whales 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.*, 2022). 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.*, 2022).

Given the documented habitat use within the area, some of the individuals taken would likely 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 215 takes by harassment only over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 4 and 113, respectively), and in consideration of the required mitigation and other information presented, Dominion Energy's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the western North Atlantic stock of fin whales.

Humpback Whale

The West Indies 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 Specified Geographic Region section of this preamble, humpback whales along the Atlantic Coast have been experiencing an active UME as elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately 40 percent had evidence of human interaction (vessel strike or entanglement). The UME does not yet provide cause for concern regarding

population-level impacts and take from vessel strike and entanglement is not authorized in this rulemaking. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS of which the Gulf of Maine stock is a part) remains stable at approximately 12,000 individuals.

The rule authorizes up to 250 takes by harassment only over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, is four and 130, respectively (combined, this maximum annual take ($n=134$) equates to approximately 9.6 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). Given that humpback whales are known to forage off of Virginia, it is likely that some subset of the individual whales exposed could be taken several times annually.

Among the activities analyzed, pile driving is likely to result in the highest number of Level A harassment annual takes (four) of humpback whales. The maximum number of annual take authorized, by Level B harassment, is highest for pile driving ($n=104$; WTGs plus OSS pin piles).

As described in the Description of Marine Mammals in the Specified Geographic Region section, Humpback whales are known to occur regularly throughout the Mid-Atlantic Bight, including Virginia waters, with strong seasonality where peak occurrences occur April to June (Barco *et al.*, 2002; Geo-Marine, 2010; Curtice *et al.*, 2019; Hayes *et al.*, 2022).

In the western North Atlantic, humpback whales feed during spring, summer, and fall over a geographic range encompassing the eastern coast of the U.S. Feeding is generally considered to be focused in areas north of the Project Area, including 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, such individuals would likely be exposed to

noise levels from the project above the harassment thresholds only once during migration through the Project Area.

For all the reasons described in the *Mysticetes* section above, we anticipate any potential PTS and TTS would be concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of baleen whales. If TTS is incurred, hearing sensitivity would likely return to pre-exposure levels relatively shortly after exposure ends. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Given the magnitude and severity of the impacts discussed above (including no more than 250 takes over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of four and 130, respectively), and in consideration of the required mitigation measures and other information presented, Dominion Energy's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Gulf of Maine stock of humpback whales.

Minke Whale

Minke whales are not listed under the ESA, and the Canadian East Coast stock is neither considered Depleted nor strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area. As described in the Description of Marine Mammals in the Specified Geographic Region section, a UME has been designated for this species but is pending closure. No serious injury or mortality is anticipated or authorized for this species.

The rule authorizes up to 131 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be eight and 56, respectively (combined, this annual take (n=64) equates to approximately 0.29 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). As described in the Description of Marine Mammals in the Specified Geographic Region section of the proposed rule, minke whales are common offshore the U.S. Eastern

Seaboard with a strong seasonal component in the continental shelf and in deeper, off-shelf waters (CETAP, 1982; Hayes *et al.*, 2022). 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 Specified Geographic Region section, there is a UME for Minke whales, along the Atlantic coast from Maine through South Carolina, with 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 authorized through this action is not expected to exacerbate the UME in any way. Furthermore, this UME has been declared non-active and is pending closure.

We anticipate the impacts of this harassment to follow those described in the general *Mysticetes* section above. Any potential PTS would be minor (limited to a few dB) and any TTS would be of short duration and concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of minke whales. Level B harassment would be temporary, with primary impacts being temporary displacement of the Project Area but not abandonment of any migratory or foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 131 takes of the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 8 and 56, respectively), and in consideration of the required mitigation and other information presented, Dominion Energy's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Canadian Eastern Coastal stock of minke whales.

Sei Whale

Sei whales are listed as Endangered under the ESA, and the Nova Scotia stock is considered both Depleted and Strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area and no UME has been designated for this species or stock. No serious injury or mortality is anticipated or authorized for this species.

The rule authorizes up to 10 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be one and three, respectively (combined, this annual take (n=4) equates to approximately 0.06 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 Area of Specified Activities section of the proposed rule, 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 Virginia. 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 half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of sei whales. Moreover, any TTS would be of a small degree. Any avoidance of the Project Area due to the Project's activities would be expected to be temporary.

Given the magnitude and severity of the impacts discussed above (including no more than ten takes of the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of one and three, respectively), and in consideration of the required mitigation and other information presented, Dominion Energy's activities are not expected to result in impacts on the reproduction or survival of any

individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Nova Scotia stock of sei whales.

Odontocetes

In this section, we include information here that applies to all of the odontocete species and stocks addressed below. Odontocetes include dolphins, porpoises, and all other whales possessing teeth, and we further divide them into the following subsections: sperm whales, dolphins and small whales, and harbor porpoises. These sub-sections include more specific information, as well as conclusions for each stock represented.

All of the takes of odontocetes authorized incidental to Dominion Energy's specified activities are by pile driving and HRG surveys. No serious injury or mortality is anticipated or authorized. We anticipate that, given ranges of individuals (*i.e.*, that some individuals remain within a small area for some period of time), and non-migratory nature of some odontocetes in general (especially as compared to mysticetes), these takes are more likely to represent multiple exposures of a smaller number of individuals than is the case for mysticetes, though some takes may also represent one-time exposures to an individual. Foundation installation is likely to disturb odontocetes to the greatest extent, compared to HRG surveys. While we expect animals to avoid the area during foundation installation, their habitat range is extensive compared to the area ensonified 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 to 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, if it does occur, is anticipated to be minimal based on the lack of avoidance previously demonstrated by these species.

The waters off the coast of Virginia are used by several odontocete species. However, none except the sperm whale are listed under the ESA, and there are no known habitats of particular importance. In general, odontocete habitat ranges are far-reaching along the Atlantic coast of the U.S. and the waters off of Virginia, including the Project Area, do not contain any particularly unique odontocete habitat features.

Sperm Whale

Sperm whales are listed as endangered under the ESA, and the North Atlantic stock is considered both Depleted and Strategic under the MMPA. The North Atlantic stock spans the East Coast out into oceanic waters well beyond the U.S. exclusive economic zone. Although listed as endangered, the primary threat faced by the sperm whale across its range (*i.e.*,

commercial whaling) has been eliminated. Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. There is no currently reported trend for the stock and, although the species is listed as endangered under the ESA, there are no specific issues with the status of the stock that cause particular concern (*e.g.*, no UMEs). There are no known areas of biological importance (*e.g.*, critical habitat or BIAs) in or near the Project Area. No mortality or serious injury is anticipated or authorized for this species.

The rule authorizes up to six takes, by Level B harassment only over the 5-year period. The maximum annual allowable take by Level B harassment, is three, which equates to approximately 0.07 percent of the stock abundance, if each take were considered to be of a different individual, with no take expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). Given sperm whale's preference for deeper waters, especially for feeding, it is unlikely that individuals will remain in the Project Area for multiple days, and therefore, the estimated takes likely represent exposures of different individuals on 1 day annually.

If sperm whales are present in the Project Area during any Project activities, they will likely be only transient visitors and not engaging in any significant behaviors. Further, the potential for TTS is low for reasons described in the general *Odontocete* section, but if it does occur, any hearing shift would be small and of a short duration. Because whales are not expected to be foraging in the Project Area, any TTS is not expected to interfere with foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than six takes, by Level B harassment only, over the course of the 5-year rule, and a maximum annual allowable take of three), and in consideration of the required mitigation and other information presented, Dominion Energy's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by Level B harassment anticipated and authorized will have a negligible impact on the North Atlantic stock of sperm whales.

Dolphins and Small Whales (Inclusive of Delphinid Species, False Killer Whale, Melon-headed Whale, Pygmy Sperm Whale, and Pilot Whales)

The 12 species and 13 stocks included in this group (which are indicated in Table 2 in the *Kogiidae* and *Delphinidae* families) are not listed under the ESA; however, the Southern Migratory Coastal stock of bottlenose dolphins and short-finned pilot whales are listed as Strategic under the MMPA, and pantropical spotted dolphins are listed as Depleted under the MMPA. There are no known areas of specific biological importance in or around the Project Area. As described above for any of these species and no UMEs have been designated for any of these species. No serious injury or mortality is anticipated or authorized for these species.

The 11 delphinid species (constituting 12 stocks) with takes authorized for the Project are Atlantic spotted dolphin, Atlantic white-sided dolphin, bottlenose dolphin, Clymene dolphin, common dolphin, false killer whale, melon-headed whale, long-finned pilot whale, short-finned pilot whale, pantropical spotted dolphin, and Risso's dolphin. The rule would allow for the total authorization of 8 to 26,764 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 4 (false killer whale) to 7,360 (both Atlantic spotted dolphin and common dolphin). Overall, this annual take equates to approximately 0.04 (Atlantic white-sided dolphin) to 18.44 (Atlantic spotted dolphin) percent of the stock abundance (if each take were considered to be of a different individual, which is not likely the case) depending on the species, with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring).

Take has also been authorized for a single species (of a single stock) of Family *Kogiidae*, the pygmy sperm whale. This rule allows for the total authorization of two takes by Level B harassment only, over the entire 5-year period. The maximum annual allowable take for this species, by Level B harassment only, is one per year. Relative to the total population estimate for this small whale species, this equates to approximately 0.01 percent of the stock abundance, if each of the takes were considered to be of a different individual.

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 foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals. While delphinids may be taken on several occasions, none of these species are known to have small home ranges within the Project Area or known to be particularly sensitive to anthropogenic noise. Some TTS can 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.

Across these species, the maximum number of incidental takes, by Level B harassment only, authorized in any one year ranges between 1 (pygmy sperm whale) and 7,360 (for both Atlantic spotted dolphins and common dolphins). The number of takes authorized in the last 3 years of the rule is notably less and the 5-year total number of take (by Level B harassment only) authorized ranges between 2 (pygmy sperm whale) and 26,764 (Atlantic spotted dolphin). Further, though the estimated numbers of take are comparatively higher than the numbers for mysticetes, we note that for all species they are relatively low relative to the population abundance.

For the Atlantic spotted dolphin, given both the comparatively higher number of takes and the higher number of takes relative to the stock abundance, 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 all three stocks of bottlenose dolphin (i.e., offshore, coastal, and joint-offshore and coastal), given the number of takes and residential tendencies of the species, 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.

As described above for odontocetes broadly, given the comparatively higher number of estimated takes for some species and the behavioral patterns of odontocetes, we anticipate that a fair number of these instances of take in a day represent multiple exposures of a smaller number of individuals, meaning the actual number of individuals taken is lower. Although some amount of repeated exposure to some individuals is likely given the duration of activity planned by Dominion Energy, the intensity of any Level B harassment combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would

not impact the reproduction or survival of any individuals.

Overall, most of the populations of all delphinid and small whale species and stocks for which we authorize take are stable (no declining population trends). For others, two stocks are labeled as strategic (i.e., Southern Migratory Coastal stock of bottlenose dolphins and Western North Atlantic stock of short-finned pilot whale) and one is labeled as depleted (i.e., pantropical spotted dolphin). None of these stocks are experiencing existing UMEs. No mortality, serious injury or Level A harassment is anticipated or authorized for any of these species. Given the magnitude and severity of the impacts discussed above and in consideration of the required mitigation and other information presented, as well as the status of these stocks, Dominion Energy's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on all of the following species and stocks: pygmy sperm whales, Atlantic spotted dolphins, Atlantic white-sided dolphins, bottlenose dolphins, Clymene dolphins, common dolphins, false killer whales, melon-headed whales, pilot whale *spp.* (consisting of long-finned pilot whales and short-finned pilot whales), pantropical spotted dolphins, and Risso's dolphins.

Harbor Porpoises

Harbor porpoises are not listed under the ESA, and the Gulf of Maine/Bay of Fundy stock is neither considered depleted or strategic under the MMPA. The stock is found predominantly in northern U.S. coastal waters (less than 150 m depth) and up into Canada's Bay of Fundy (between New Brunswick and Nova Scotia). Although the population trend is not known, there are no UMEs or other factors that cause particular concern for this stock. No mortality or non-auditory injury are anticipated or authorized for this stock.

The rule authorizes up to 143 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 1 and 40, respectively (combined, this annual take (n=41) 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, while many of the takes likely represent exposures of different individuals on 1 day a year, some subset of the

individuals exposed could be taken up to a few times annually.

Regarding the severity of takes by Level B harassment, because harbor porpoises are particularly sensitive to noise, it is likely that a fair number of the responses could be of a moderate nature, particularly to pile driving. In response to pile driving, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* (2017) in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. However, foundation installation is scheduled to occur off the coast of Virginia (based on the density values (0.00000) presented for both summer (June to August) and fall (September to October); Table 1) and, given alternative foraging areas, 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 be of small magnitude. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

As discussed in Hayes *et al.* (2022), harbor porpoises are seasonally distributed. During fall (October through 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 (<1,800 m; Westgate *et al.*, 1998), although the majority are found over the continental shelf. While harbor porpoises are likely to avoid the area during any of the Project's construction activities, as demonstrated during European wind farm construction, the time of year in which 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 Virginia.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Dominion Energy's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

Phocids (Harbor Seals and Gray Seals)

The harbor seal and gray seal are not listed under the ESA, and neither the western North Atlantic stock of gray seal nor the western North Atlantic stock of harbor seal are considered depleted or strategic under the MMPA. There are no known areas of specific biological importance in or around the Project Area. As described in the Description of Marine Mammals in the Specified Geographic Region section, a UME has been designated for harbor seals and gray seals and is described further below. No serious injury or mortality is anticipated or authorized for this species.

For the 2 seal species, the rule authorizes up to 220 takes for each species by harassment only over the 5-year period. The maximum annual allowable take for each species by Level A harassment and Level B harassment, would be one and 83, respectively (combined, this annual take (n=84) equates to approximately 0.14 percent of the stock abundance for harbor seals and 0.31 percent of the stock abundance for gray seals, if each take were considered to be of a different individual). Though harbor seals and gray seals are considered migratory and no specific feeding areas have been designated in the area, the higher number of takes relative to the stock abundance suggests that while some of the takes likely represent exposures of different individuals on 1 day a year, it is likely that some subset of the individuals exposed could be taken several times annually.

Harbor and gray seals occur in Virginia waters most often during the fall and winter, sometimes until early spring, with harbor seal occurrences more common than gray seals (Hayes *et al.*, 2022; Jones and Rees, 2022; Ampela *et al.*, 2023). Seals are more likely to be close to shore (e.g., closer to the edge of

the area ensonified above NMFS' harassment threshold), such that exposure to foundation installation would be expected to be at comparatively lower levels. There are no known haul-out sites or other areas of importance for either harbor or gray seals near the coastal cofferdam and goal post location (offshore of the State Military Reservation in Virginia Beach, Virginia) or in the Project Area. However, pinnipeds have been recorded at different sites in the Chesapeake Bay and along Eastern Shore, Virginia (Jones and Rees, 2022; Ampela *et al.*, 2023). Given the distance for which we expect Dominion Energy's activities to occur, away from the mouth and in-water regions of the Chesapeake Bay, NMFS does not expect that in-air sounds produced would cause the take of hauled-out pinnipeds. Therefore, NMFS does not expect any harassment to occur and has not authorized any take from in-air impacts on hauled-out seals.

As described in the Potential Effects to Marine Mammals and Their Habitat section in the proposed rule (88 FR 28656, May 4, 2023), 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 (see Lucke *et al.*, 2006; Edren *et al.*, 2010; Skeate *et al.*, 2012; Russell *et al.*, 2016).

Given the low anticipated magnitude of impacts from any given exposure (e.g., temporary avoidance), even repeated Level B harassment across a few days of some small subset of individuals, which could occur, is unlikely to result in impacts on the reproduction or survival of any individuals. Moreover, pinnipeds would benefit from the mitigation measures described in 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 PTS and TTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), PTS and TTS would not occur at frequencies around 5 kHz where

pinniped hearing is most susceptible to noise-induced hearing loss (Kastelein *et al.*, 2018). In summary, any PTS and TTS would be of small degree and not occur across the entire, or even most sensitive, hearing range. Hence, any impacts from PTS and TTS are likely to be of low severity and not interfere with behaviors critical to reproduction or survival.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and occurred across Maine, New Hampshire, and Massachusetts until 2020. Based on tests conducted so far, the main pathogen found in the seals belonging to that UME was phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. Currently, the only active UME is occurring in Maine with some harbor and gray seals testing positive for highly pathogenic avian influenza (HPAI) H5N1. Although elevated strandings continue, neither UME (alone or in combination) provides cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 61,000 and annual mortality/serious injury (M/SI) ($n=339$) is well below PBR (1,729) (Hayes *et al.*, 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated overall abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic, as well as in Canada (Hayes *et al.*, 2020).

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Dominion Energy's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on harbor and gray seals.

Negligible Impact Determination

No mortality or serious injury is anticipated to occur or authorized. As described in the analysis above, the impacts resulting from the project's activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect any of the species or stocks through effects on annual rates of recruitment or survival. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and, taking into consideration the

implementation of the required mitigation and monitoring measures, NMFS finds that the marine mammal take from all of Dominion Energy'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 maximum number of individuals estimated to be taken in a year to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS is authorizing incidental take by Level A harassment and/or Level B harassment of 21 species of marine mammals (with 22 managed stocks). The maximum number of instances of takes by combined Level A harassment and Level B harassment possible within any 1 year relative to the best available population abundance is less than one-third for all species and stocks potentially impacted.

For 13 stocks, less than 1 percent of the stock abundance is authorized to be annually taken by harassment; for 7 stocks, less than 10 percent of the stock abundance is authorized to be taken annually by harassment; and for 1 stock, less than 20 percent of the stock abundance is authorized to be annually taken by harassment. Specific to the North Atlantic right whale, the maximum amount of take, which is by Level B harassment only, is 7, or 2.07 percent of the stock abundance, assuming that each instance of take represents a different individual. While no population estimate is available for melon-headed whales, it can be assumed that the low amount of maximum annual take authorized ($n=5$; by Level B harassment only) would constitute small numbers. For all species, please see Table 24 for information relating to this small numbers analysis.

Based on the analysis contained herein of the activities (including the

required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Classification

Endangered Species Act (ESA)

Section 7(a)(2) of the ESA 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.

There are four marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA that may be taken, by harassment, incidental to construction of the CVOW-C Project: the North Atlantic right, sei, fin, and sperm whale. The Permit and Conservation Division requested initiation of section 7 consultation on April 4, 2023 with GARFO on the issuance of the CVOW-C regulations and the associated 5-year LOA under section 101(a)(5)(A) of the MMPA.

NMFS issued a Biological Opinion on September 19, 2023 concluding that the promulgation of the rule and issuance of LOAs thereunder is not likely to jeopardize the continued existence of threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of designated or proposed critical habitat. The Biological Opinion is available at <https://repository.library.noaa.gov/view/noaa/55495>.

Dominion Energy is required to abide by the promulgated regulations, as well as the reasonable and prudent measures and terms and conditions of the

Biological Opinion and Incidental Take Statement, as issued by NMFS.

National Environmental Policy Act (NEPA)

To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order 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 final Environmental Impact Statement (FEIS) for the CVOW–C Project offshore Virginia (2023 CVOW–C FEIS), which was finalized on September 29, 2023, and is available at <https://www.boem.gov/renewable-energy/state-activities/coastal-virginia-offshore-wind-commercial-project-final>. In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2023 CVOW–C FEIS and determined that it is adequate and sufficient to meet our responsibilities under NEPA for the promulgation of this rule and issuance of the associated LOA. NMFS, therefore, has adopted the 2023 CVOW–C FEIS through a joint Record of Decision (ROD) with BOEM. The joint ROD for adoption of the 2023 CVOW–C FEIS and promulgation of this final rule and subsequent issuance of a LOA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Executive Order 12866

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a

penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOA, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS.

Coastal Zone Management Act (CZMA)

The Coastal Zone Management Act requires that any applicant for a required Federal license or permit to conduct an activity, within the coastal zone or within the geographic location descriptions (*i.e.*, areas outside the coastal zone in which an activity would have reasonably foreseeable coastal effects), affecting any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. NMFS determined that Dominion Energy's application for an incidental take regulations is an unlisted activity and, thus, is not subject to Federal consistency requirements in the absence of the receipt and prior approval of an unlisted activity review request from the state by the Director of NOAA's Office for Coastal Management. Pursuant to 15 CFR 930.54, NMFS published notice of receipt of Dominion Energy's application in the **Federal Register** on September 15, 2022 (87 FR 56634) and published notice of the proposed rule on May 4, 2023 (88 FR 28656). The Commonwealth of Virginia did not request approval from the Director of NOAA's Office for Coastal Management to review Dominion Energy's application as an unlisted activity, and the time period for making such request has expired. Therefore, NMFS has determined the incidental take authorization is not subject to Federal consistency review.

Waiver of Delay in Effective Date

The Assistant Administrator for Fisheries has determined that there is a sufficient basis under the Administrative Procedure Act (APA) to waive the 30-day delay in the effective date of the measures contained in the final rule. Section 553 of the APA provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date with certain exceptions, including (1) for a substantive rule that

relieves a restriction or (2) when the agency finds and provides good cause for foregoing delayed effectiveness (5 U.S.C 553(d)(1), (d)(3)). Here, the issuance of regulations under section 101(a)(5)(A) of the MMPA is a substantive action that relieves the statutory prohibition on the taking of marine mammals, specifically, the incidental taking of marine mammals associated with Dominion Energy's specified activities during the construction of the CVOW–C Project offshore of Virginia. Until the effective date of these regulations, Dominion Energy is prohibited from taking marine mammals incidental to the Project.

In addition, good cause exists for waiving the delay in effective date. Dominion Energy plans to conduct HRG surveys in early February 2024. Delays in this activity will impact construction activity sequencing and potentially vessel and other service procurement and availability. Moreover, offshore wind projects, such as the CVOW–C Project, that are developed to generate renewable energy have great societal and economic importance, and delays in completing the project are contrary to the public interest.

Finally, Dominion Energy has informed NMFS that it does not require 30 days to prepare for implementation of the regulations and requests that this final rule take effect on or before February 5, 2024. For these reasons, the subject regulations will be made immediately effective upon publication.

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: January 4, 2024.

Samuel D. Rauch, III,

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

For reasons set forth in the preamble, NMFS amends 50 CFR part 217 to read as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart DD, consisting of §§ 217.290 through 217.299, to read as follows:

Subpart DD—Taking Marine Mammals Incidental to the Coastal Virginia Offshore Wind Commercial Project Offshore of Virginia

Sec.

- 217.290 Specified activity and specified geographical region.
 217.291 Effective dates.
 217.292 Permissible methods of taking.
 217.293 Prohibitions.
 217.294 Mitigation requirements.
 217.295 Monitoring and reporting requirements.
 217.296 Letter of Authorization.
 217.297 Modifications of Letter of Authorization.
 217.298–217.299 [Reserved]

Subpart DD—Taking Marine Mammals Incidental to the Coastal Virginia Offshore Wind Commercial Project Offshore of Virginia

§ 217.290 Specified activity and specified geographical region.

(a) Regulations in this subpart apply to activities associated with the Coastal Virginia Offshore Wind Commercial Project (hereafter referred to as the “Project”) by the Virginia Electric and Power Company, doing business as Dominion Energy Virginia (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 the LOA Holder must be implemented by

those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified geographical region is the Mid-Atlantic Bight, which includes, but is not limited to, the Bureau of Ocean Energy Management (BOEM) Lease Area Outer Continental Shelf (OCS)—A 0483 Commercial Lease of Submerged Lands for Renewable Energy Development, one export cable route, and one sea-to-shore transition point located at the State Military Reservation in Virginia Beach, Virginia.

(c) The specified activities are vibratory and impact pile driving of wind turbine generator (WTGs) and offshore substation (OSSs) foundations; vibratory pile driving (install and subsequently removal) of cofferdams; impact pile driving (install and subsequently removal) of goal posts; fishery and ecological monitoring surveys; placement of scour protection; trenching, laying, and burial activities associated with the installation of the export cable from OSSs to shore-based converter stations and inter-array cables between turbines; high-resolution geophysical (HRG) site characterization surveys; vessel transit within the specified geographical region to transport crew, supplies, and materials; and WTG operation.

§ 217.291 Effective dates.

The regulations in this subpart are effective from February 5, 2024, through February 4, 2029.

§ 217.292 Permissible methods of taking.

Under a LOA, issued pursuant to §§ 216.106 and 217.296, LOA Holder and those persons it authorizes or funds to conduct activities on its behalf may incidentally, but not intentionally, take marine mammals within BOEM Lease Area OCS—A 0483 Commercial Lease of Submerged Lands for Renewable Energy Development, along export cable routes, and at the sea-to-shore transition point located at the State Military Reservation in Virginia Beach, Virginia in the following ways, provided 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 and vibratory pile driving (WTG and OSS foundation installation), impact pile driving of goal posts, vibratory pile driving of temporary cofferdams, and HRG site characterization surveys; and

(b) By Level A harassment associated with the acoustic disturbance of marine mammals by impact pile driving WTG and OSS 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 stocks:

TABLE 1 TO PARAGRAPH (d)

Marine mammal species	Scientific name	Stock
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western North Atlantic.
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic.
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine.
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal.
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia.
Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic.
Pygmy sperm whale	<i>Kogia breviceps</i>	Western North Atlantic.
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic.
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic.
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic—Offshore. Southern Migratory Coastal.
Clymene dolphin	<i>Stenella clymene</i>	Western North Atlantic.
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic.
False killer whale	<i>Pseudorca crassidens</i>	Western North Atlantic.
Melon-headed whale	<i>Peponocephala electra</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.
Pantropical spotted dolphin	<i>Stenella attenuata</i>	Western North Atlantic.
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic.
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy.
Gray seal	<i>Halichoerus grypus</i>	Western North Atlantic.
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic.

§ 217.293 Prohibitions.

Except for the takings described in § 217.292 and authorized by an LOA issued under §§ 217.296 or 217.297, it is

unlawful for any person to do any of the following in connection with the activities described in this subpart:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 217.296 or 217.297;

(b) Take any marine mammal not specified in § 217.292(d);

(c) Take any marine mammal specified in the LOA in any manner other than as specified in the LOA; or

(d) Take any marine mammal specified in § 217.292(d), after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammals.

§ 217.294 Mitigation requirements.

When conducting the activities identified in § 217.290(c) within the area described in § 217.290(b), LOA Holder must implement the mitigation measures contained in this section and any LOA issued under §§ 217.296 or 217.297. These mitigation measures include, but are not limited to:

(a) *General conditions.* LOA Holder must comply with the following general measures:

(1) A copy of any issued LOA must be in the possession of LOA Holder and its designees, all vessel operators, visual protected species observers (PSOs), passive acoustic monitoring (PAM) operators, pile driver operators, and any other relevant designees operating under the authority of the issued LOA;

(2) LOA Holder must conduct training for construction, survey, and vessel personnel and the marine mammal monitoring team (PSO and PAM operators) prior to the start of all in-water construction activities in order to explain responsibilities, communication procedures, marine mammal detection and identification, mitigation, monitoring, and reporting requirements, safety and operational procedures, and authorities of the marine mammal monitoring team(s). This training must be repeated for new personnel who join the work during the project. A description of the training program must be provided to NMFS at least 60 days prior to the initial training before in-water activities begin. Confirmation of all required training must be documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to initiating project activities;

(3) Prior to and when conducting any in-water construction 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., DMAs and/or acoustically-triggered slow zones) to provide situational awareness for both vessel operators, PSO(s), and PAM operator(s). The marine mammal monitoring team must monitor these systems no less than every 4 hours;

(4) Any marine mammal observed by project personnel must be immediately communicated to any on-duty PSOs, PAM operator(s), and all vessel captains. Any large whale observation or acoustic detection by PSOs or PAM operators must be conveyed to all vessel captains;

(5) For North Atlantic right whales, any visual detection by a PSO or acoustic detection by PAM operators at any distance (where applicable for the specified activities) must trigger a delay to the commencement of pile driving and HRG surveys;

(6) In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale, it must be treated as if it were a North Atlantic right whale for purposes of mitigation;

(7) Any PSO has the authority to call for a delay or shutdown of project activities. If a delay to commencing an activity is called for by a PSO, LOA Holder must take the required mitigative action. If a shutdown of an activity is called for by a PSO, LOA Holder must take the required mitigative action unless shutdown would result in imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. Any disagreements between the Lead PSO and the activity operator or between the Lead PSO and another PSO regarding delays or shutdowns must only be discussed after the mitigative action has occurred;

(8) Any marine mammals observed within a clearance or shutdown zone must be allowed to remain in the area (i.e., must leave of their own volition) prior to commencing pile driving activities or HRG surveys;

(9) 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 clearance zone prior to beginning a specified activity, the activity must be delayed. If an activity is ongoing and 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 shutdown zone, the activity must be shut down (i.e., cease) immediately, unless shutdown would result in

imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. The activity must not commence or resume until the animal(s) has been confirmed to have left the clearance or shutdown zones and is on a path away from the applicable zone or after 15 minutes with no further sightings for small odontocetes and pinnipeds or 30 minutes with no further sightings for all other species;

(10) For in-water construction heavy machinery activities listed in § 217.290(c), if a marine mammal is on a path towards or comes within 10 meters (m; 32.8 feet (ft)) of equipment, LOA Holder must cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment;

(11) All vessels must be equipped with a properly installed, operational Automatic Identification System (AIS) device and LOA Holder must report all Maritime Mobile Service Identify (MMSI) numbers to NMFS Office of Protected Resources;

(12) By accepting the LOA, LOA Holder consents to on-site observation and inspections by Federal agency personnel (including NOAA personnel) during activities described in this subpart, for the purposes of evaluating the implementation and effectiveness of measures contained within the LOA and this subpart; and

(13) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with a PSO, PAM Operator, or vessel crew member acting as an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment. Personnel may report any violations to the NMFS Office of Law Enforcement.

(b) *Vessel strike avoidance measures.* LOA Holder must comply with the following vessel strike avoidance measures while in the specified geographic region, unless 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, and requires speeds in excess of 10 kn (11.5 miles per hour (mph)) to fulfill those responsibilities. 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 speeds:

(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 and 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 vessel personnel's training and understanding of the Incidental Take Authorization (ITA) requirements must be documented on a training course log sheet and reported to NMFS within 30 days of completion of training;

(2) All vessel operators, operating at any speed and regardless of their vessel's size, must slow down, stop their vessel, or alter course to avoid striking any marine mammal;

(3) All vessels, regardless of their size, operating at any speed must have a dedicated visual observer aboard and on duty at all times whose sole responsibility (*i.e.*, must not have duties other than observing) is 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. These visual observers may be third-party observers (*i.e.*, NMFS-approved PSOs; *see* § 217.295(a)) or trained crew members (*see* (b)(1) of this section);

(4) At the onset of transiting and continuously thereafter, vessel operators must monitor the U.S. Coast Guard VHF Channel 16, over which North Atlantic right whale sightings are broadcasted.

At the onset of transiting and at least once every 4 hours, vessel operators and/or trained crew member(s) must also monitor the project's Situational Awareness System (if applicable), WhaleAlert, and relevant NOAA information systems such as the Right Whale Sighting Advisory System (RWSAS) for the presence of North Atlantic right whales;

(5) Any large whale sighting by any project-personnel, including any LOA Holder staff, contractors, or vessel crew, must be immediately communicated to all project-associated vessel operators, PSOs, and PAM operators for situational awareness. Conversely, any large whale observation or detection via a sighting network (*e.g.*, Mysticetus or similar software) by PSOs or PAM operators must be conveyed to vessel operators and crew. An ongoing large whale sighting log sheet must be maintained on each vessel and retained for vessel operator(s) review each day prior to first day's transit for awareness of recent sightings;

(6) All vessel operators must abide by existing applicable vessel speed regulations (*see* 50 CFR 224.105). Nothing in this subpart exempts vessels from any other applicable marine mammal speed or approach regulations. Vessels must not travel over 10 kn from November 1st through April 30th, annually, in the specified geographic region, and must transit at 10 kn or less within any active North Atlantic right whale Slow Zone (*i.e.*, Dynamic Management Areas (DMAs) or acoustically-triggered slow zone);

(7) All vessel operators, regardless of their vessel's size, must immediately reduce vessel 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 by project personnel or via any of the monitoring systems (refer back to paragraph (b)(4) of this section) that vessel must operate at 10 kn (11.5 mph) or less for 24 hours following the reported detection;

(8) All vessels, regardless of size, must immediately reduce speed to 10 kn or less when any large whale, mother/calf pairs, or large assemblages of cetaceans are observed within 500 m (0.31 mi) of an underway vessel;

(9) If vessel(s) are traveling at speeds greater than 10 kn (*i.e.*, no speed restrictions are enacted) in the transit corridor (defined as 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 detection within or approaching the transit corridor, all vessels in the transit corridor must travel at 10 kn 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) All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 kn or less such that the 500-m minimum separation distance requirement is not violated. If a North Atlantic right whale is sighted within 500 m of an underway vessel, that vessel operator must reduce speed and shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 500 m. If a whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take the vessel strike avoidance measures described in this paragraph (b)(7) of this section;

(11) All 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, the vessel must 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;

(12) All vessels must maintain a minimum separation distance of 50 m (164 ft) from all delphinoid cetaceans and pinnipeds with an exception made for those that approach the vessel (*i.e.*, bow-riding dolphins). If a delphinoid cetacean or pinniped is sighted within 50 m of a transiting vessel, the vessel must shift the engine to neutral, with an exception made for those that approach the vessel (*e.g.*, bow-riding dolphins). Engines must not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m;

(13) When a marine mammal(s) is sighted while the 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);

(14) All vessels underway must not divert or alter course to approach any marine mammal;

(15) Vessel operators must check, daily, for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (*i.e.*, DMAs, Seasonal Management Areas, Slow Zones) and any information regarding North Atlantic right whale sighting locations; and

(16) LOA Holder must submit a North Atlantic Right Whale Vessel Strike Avoidance Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to the planned start of vessel activity. The plan must provide details on the vessel-based observer and PAM protocols for transiting vessels in the vessel transit corridor. If a plan is not submitted and approved by NMFS prior to vessel operations, all project vessels must travel at speeds of 10 kn (11.5 mph) or less. LOA Holder must comply with any approved North Atlantic Right Whale Vessel Strike Avoidance Plan.

(c) *WTG and OSS foundation installation.* The following requirements apply to pile driving activities associated with the installation of WTG and OSS foundations:

(1) Vibratory and impact pile driving of foundation piles must not occur November 1st through April 30th, annually;

(2) Monopiles must be no larger than 9.5-m in diameter, representing the larger end of the tapered 9.5/7.5-m monopile design. Pin piles must be no larger than 2.8-m in diameter. During all monopile and pin pile installation, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 4,000 kilojoules (kJ) for monopile installations and 3,000 kJ for pin pile installation. No more than two monopile foundation or two pin piles for jacket foundations may be installed per day;

(3) LOA Holder may initiate foundation pile driving (*i.e.*, vibratory and impact) only from May 1st through October 31st, annually, in accordance with the NMFS-approved Pile Driving Plan;

(4) LOA Holder must only perform foundation pile driving during daylight hours, defined as no later than 1.5 hours prior to civil sunset and no earlier than 1 hour after civil sunrise, and may only

continue into darkness if stopping operations represents a risk to human health, safety, and/or pile stability and an Alternative Monitoring Plan has been approved by NMFS. No new pile driving may begin when pile driving continues into darkness;

(5) LOA Holder must utilize a soft-start protocol at the beginning of foundation installation for each impact pile driving event. No soft-start for vibratory pile driving is necessary;

(6) 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;

(7) LOA Holder must establish clearance and shutdown zones, which must be measured using the radial distance around the pile being driven. Clearance monitoring must begin 60 minutes immediately prior to initiation of pile driving. If a marine mammal is detected within or about to enter the applicable clearance zones 30 minutes prior to the beginning of pile driving (including soft start if impact pile driving) or during pile driving, pile driving must be delayed or shutdown 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;

(8) For North Atlantic right whales, any visual observation or acoustic detection 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;

(9) 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 foundation pile driving;

(i) At least a double bubble curtain must 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 to review within 72 hours after each pile using a bubble curtain is installed. Additionally, a full maintenance check (*e.g.*, manually clearing holes) must occur prior to each pile being installed;

(vi) Corrections to the bubble ring(s) to meet the performance standards in this paragraph (c)(9) must occur prior to pile driving of foundation piles.

(vii) For any noise mitigation device in addition to the bubble curtain, LOA Holder must inspect and carry out appropriate maintenance on the system and ensure the system is functioning properly prior to every pile driving event.

(10) LOA Holder must utilize NMFS-approved PAM systems, as described in paragraph (c)(17) of this section. The PAM system components (*i.e.*, acoustic buoys) must not be placed closer than 1 km (0.6 mi) 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 able to detect a vocalization of North Atlantic right whales up to 10 km (6.2 mi);

(11) LOA Holder must utilize PSO(s) and PAM operator(s), as described in § 217.295(c). At least three on-duty PSOs must be on the pile driving platform. Additionally, two dedicated-PSO vessels must be used at least 60 minutes before, during, and 30 minutes after all pile driving, and each dedicated-PSO vessel must have at least three PSOs on duty during these time periods. LOA Holder may request NMFS approval to use alternative technology *in lieu* of one or two of the dedicated PSO vessels that provide similar marine mammal detection capabilities.

(12) If a marine mammal is detected (visually or acoustically) entering or within the respective shutdown zone after pile driving has begun, the PSO 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 risk of pile refusal or pile instability. If pile driving is not shut down due to 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* 217.295(g));

(13) A visual observation at any distance from a PSO or acoustic detection of a North Atlantic right whale triggers shutdown requirements under paragraph (c)(12) of this section. If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving may not restart until the North Atlantic right whale has neither been visually or acoustically detected for 30 minutes;

(14) 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;

(15) LOA Holder must conduct sound field verification (SFV) measurements during pile driving activities associated with the installation of, at minimum, the first three monopile foundations and for all three OSS foundations (for all 12 pin piles installed). SFV measurements must continue until at least three consecutive piles demonstrate noise levels are at or below those modeled, assuming 10 decibels (dB) of attenuation. Subsequent SFV measurements are also required should larger piles be installed or if additional monopiles are driven that may produce louder sound fields than those previously measured (*e.g.*, higher hammer energy, greater number of strikes, *etc.*). SFV measurements must be conducted as follows:

(i) Measurements must be made at a minimum of four distances from the

pile(s) being driven, along a single transect, in the direction of lowest transmission loss (*i.e.*, projected lowest transmission loss coefficient), including, but not limited to, 750 m (2,460 ft) and three additional ranges, including, at least, the modeled Level B harassment isopleth assuming 10 dB attenuation. At least one additional measurement at an azimuth 90 degrees from the array at 750 m must be made. At each location, there must be a near bottom and mid-water column hydrophone;

(ii) The recordings must be continuous throughout the duration of all pile driving of each foundation;

(iii) The SFV measurement systems must have a sensitivity appropriate for the expected sound levels from pile driving received at the nominal ranges throughout the installation of the pile. The frequency range of SFV measurement systems must cover the range of at least 20 hertz (Hz) to 20 kilohertz (kHz). The SFV measurement systems must be designed to have omnidirectional sensitivity so that the broadband received level of all pile driving exceeds the system noise floor by at least 10 dB. The dynamic range of the SFV measurement system must be sufficient such that at each location, and the signals avoid poor signal-to-noise ratios for low amplitude signals and avoid clipping, nonlinearity, and saturation for high amplitude signals;

(iv) All hydrophones used in SFV measurements systems are required to have undergone a full system, traceable laboratory calibration conforming to International Electrotechnical Commission (IEC) 60565, or an equivalent standard procedure, from a factory or accredited source to ensure the hydrophone receives accurate sound levels, at a date not to exceed 2 years before deployment. Additional *in-situ* calibration checks using a pistonphone are required to be performed before and after each hydrophone deployment. If the measurement system employs filters via hardware or software (*e.g.*, high-pass, low-pass, *etc.*), which is not already accounted for by the calibration, the filter performance (*i.e.*, the filter's frequency response) must be known, reported, and the data corrected before analysis.

(v) LOA Holder must be prepared with additional equipment (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;

(vi) LOA Holder must submit interim reports within 48 hours after each

foundation is measured (*see* § 217.295(g) section for interim and final reporting requirements);

(vii) LOA Holder must not exceed modeled distances to NMFS marine mammal Level A harassment and Level B harassment thresholds, assuming 10-dB attenuation, for foundation installation. If any of the interim SFV measurement reports submitted indicate the modeled distances to NMFS marine mammal Level A harassment and Level B harassment thresholds assuming 10-dB attenuation, then LOA Holder must implement 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 all subsequent foundations. LOA Holder must also increase clearance and shutdown zone sizes to those identified by NMFS until SFV measurements on at least three additional foundations demonstrate acoustic distances to harassment thresholds meet or are less than those modeled assuming 10-dB of attenuation. In this situation, LOA Holder would be required to provide a proposed monitoring plan for expanded zones (per the Biological Opinion) that would detail the proposed expanded zones and any additional monitoring and mitigation that would be implemented. If the harassment zones are expanded beyond an additional 1,500 m (0.93 mi), additional PSOs must be deployed on additional platforms, with each observer responsible for maintaining watch in no more than 180 degrees and of an area with a radius no greater than 1,500 m.

(viii) LOA Holder must optimize the sound attenuation systems (*e.g.*, ensure hose maintenance, pressure testing, *etc.*) to, at least, meet noise levels modeled, assuming 10-dB attenuation, within three piles or else foundation installation activities must cease until NMFS and LOA Holder can evaluate the situation and ensure future piles must not exceed noise levels modeled assuming 10-dB attenuation;

(ix) If, after additional measurements conducted pursuant to requirements of paragraph (15)(vii) of this section, acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10-dB attenuation), LOA Holder may request to NMFS Office of Protected Resources a modification of the clearance and shutdown zones. For NMFS Office of Protected Resources to consider a modification request for reduced zone sizes, LOA Holder must have conducted SFV measurements on

an additional three WTG monopile foundations 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;

(x) LOA Holder must conduct SFV measurements upon commencement of turbine operations to estimate turbine operational source levels and transmission loss rates, in accordance with a NMFS-approved Foundation Installation Pile Driving SFV Plan. SFV must be conducted in the same manner as previously described in paragraph (c)(15) of this section, with appropriate adjustments to measurement distances, number of hydrophones, and hydrophone sensitivities being made, as necessary; and

(xi) LOA Holder must submit a SFV Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of foundation installation activities and abide by the Plan if approved. At minimum, the SFV Plan must describe how LOA Holder would ensure that the first three monopile foundation installation sites selected for SFV measurements are representative of the rest of the monopile installation sites such that future pile installation events are anticipated to produce similar sound levels to those piles measured. In the case that these sites/scenarios are not determined to be representative of all other pile installation sites, LOA Holder must include information in the SFV Plan on how additional sites/scenarios would be selected for SFV measurements. This SFV Plan must also describe approaches that LOA Holder could take to adjust noise attenuation systems or add systems in the case that any SFV measurements obtained demonstrate that noise levels are above those modeled (assuming 10 dB of attenuation). Furthermore, the SFV Plan must also include how operational noise would be monitored. Operational parameters (e.g., direct drive information, turbine rotation rate) as well as sea state conditions and information on nearby anthropogenic activities (e.g., vessels transiting or operating in the area) must be reported. Additionally, 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.

(16) LOA Holder must submit a Foundation Installation Pile Driving Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of foundation pile driving and abide by the Plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this Plan prior to the start of any pile driving. The Plan must include, at a minimum: the final pile driving project design (e.g., number and type of piles, hammer type, noise abatement systems, anticipated start date, etc.) and a description of all monitoring equipment and PAM operator and PSO protocols (including number and location of PSOs and PAM operators) for all foundation pile driving. No foundation pile installation can occur without NMFS' approval of the Plan; and

(17) 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 and abide by the Plan if approved. The PAM Plan must include a description of all proposed PAM equipment, address how the proposed passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind. The Plan must describe all proposed PAM equipment, procedures, and protocols including proof that vocalizing North Atlantic right whales will be detected within the clearance and shutdown zones. No pile installation can occur if LOA Holder's PAM Plan does not receive approval from NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division.

(d) *Cofferdam and goal post installation and removal.* The following requirements apply to the installation and removal of cofferdams and goal posts at the cable landfall construction sites:

(1) Installation and removal of cofferdams and goal posts must not occur during nighttime hours (defined as the hours between 1.5 hours prior to civil sunset and 1 hour after civil sunrise);

(2) LOA Holder must establish and implement clearance zones for the installation and removal of cofferdams and goal posts using visual monitoring. These zones must be measured using the radial distance from the cofferdam

and goal post being installed and/or removed;

(3) LOA Holder must utilize PSO(s), as described in § 217.295(d). At least two on-duty PSOs must monitor for marine mammals at least 30 minutes before, during, and 30 minutes after vibratory and impact pile driving associated with cofferdam and casing pipe installation, respectively;

(4) If a marine mammal(s) is observed entering or is observed within the clearance zones, before vibratory or impact pile driving has begun, the activity must not commence until the animal(s) has exited the zone or a specific amount of time has elapsed since the last sighting. The specific time periods are 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other marine mammal species;

(5) If a marine mammal is observed entering or within the respective shutdown zone after vibratory or impact pile driving has begun, the PSO must call for a shutdown of pile driving. 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 if there is a risk of damage to the vessel that would create a risk of injury or loss of life for individuals or if the lead engineer determines there is refusal or instability. In any of these situations, LOA Holder must document the reason(s) for not shutting down and report the information to NMFS Office of Protected Resources in the annual report (as described in § 217.295(g)). In cases where shutdown is not feasible, 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;

(6) 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; and

(7) LOA Holder must employ a soft-start for all impact pile driving of goal posts. 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.

(e) *HRG surveys.* The following requirements apply to HRG surveys operating sub-bottom profilers (SBPs)

(i.e., boomers, sparkers, and Compressed High Intensity Radiated Pulse (CHIRPs)):

(1) LOA Holder must establish and implement clearance and shutdown zones for HRG surveys using visual monitoring, as described in paragraph (c) of this section;

(2) LOA Holder must utilize PSO(s), as described in § 217.295(e);

(3) LOA Holder must abide by the relevant Project Design Criteria (PDCs 4, 5, and 7) of the programmatic consultation completed by NMFS' Greater Atlantic Regional Fisheries Office on June 29, 2021 (revised September 2021), pursuant to section 7 of the Endangered Species Act (ESA). To the extent that any relevant Best Management Practices (BMPs) described in these PDCs are more stringent than the requirements herein, those BMPs supersede these requirements;

(4) SBPs (hereinafter referred to as "acoustic sources") must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Acoustic sources must be used at the lowest practicable source level to meet the survey objective, when in use, and must be turned off when they are not necessary for the survey;

(5) Prior to starting the survey and after receiving confirmation from the PSOs that the clearance zone is clear of any marine mammals, LOA Holder is required to ramp-up acoustic sources to half power for 5 minutes prior to commencing full power, unless the equipment operates on a binary on/off switch (in which case ramp-up is not required). LOA Holder must also ensure visual clearance zones are fully visible (e.g., not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to the initiation of survey activities using acoustic sources.

(6) 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;

(7) 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 (f)(12) of this section;

(8) Ramp-ups must be scheduled so as to minimize the time spent with the source activated;

(9) 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;

(10) 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;

(11) 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;

(12) 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 appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up;

(13) Once the survey has commenced, LOA Holder must shut down acoustic sources if a marine mammal enters a respective shutdown zone, except 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 (f)(13) of this section is detected in the shutdown zone;

(14) 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;

(15) LOA Holder must immediately shut down any acoustic source if a marine mammal is sighted entering or within its respective shutdown zones. If there is uncertainty regarding the identification of a marine mammal species (i.e., whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified in paragraph (f)(13) of this section is detected in the shutdown zone; and

(16) 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.

(f) *Fisheries monitoring surveys.* The following measures apply to fishery monitoring surveys: using trap/pot gear:

(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/or its cooperating institutions, contracted vessels, or commercially hired captains must implement the following "move-on" rule: If marine mammals are sighted within 1 nautical mile (nmi (1.2 mi)) of the planned location and 15 minutes before gear deployment, then LOA

Holder and/or 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 deployed gear, 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) Unless using ropeless gear, 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);

(5) All fisheries monitoring gear must be fully cleaned and repaired (if damaged) before each use/deployment;

(6) LOA Holder's fixed gear must comply with the Atlantic Large Whale Take Reduction Plan regulations at 50 CFR 229.32 during fisheries monitoring surveys;

(7) Trawl tows must be limited to a maximum of a 20-minute trawl time at 3.0 kn (3.5 mph);

(8) All gear must be emptied as close to the deck/sorting area and as quickly as possible after retrieval;

(9) All fishery survey-related lines must include the breaking strength of all lines being less than 1,700 pounds (lbs; 771 kilograms (kg)). This may be accomplished by using whole buoy line that has a breaking strength of 1,700 lbs; or buoy line with weak inserts that result in line having an overall breaking strength of 1,700 lbs;

(10) 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;

(11) 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 applicable regulations, and all buoy markings must comply with instructions received by the NOAA Greater Atlantic Regional Fisheries Office Protected Resources Division;

(12) All survey gear must be removed from the water whenever not in active survey use (*i.e.*, no wet storage); and

(13) All reasonable efforts, that do not compromise human safety, must be undertaken to recover gear.

§ 217.295 Monitoring and reporting requirements.

(a) *Protected species observer (PSO) and passive acoustic monitoring (PAM) operator qualifications.* LOA Holder must implement the following measures applicable to PSOs and PAM operators:

(1) LOA Holder must use independent, NMFS-approved PSOs and PAM operators, meaning that the PSOs and PAM operators must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant crew with regard to the presence of protected species and mitigation requirements;

(2) All PSOs and PAM operators must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO or PAM operator has acquired the relevant skills through a suitable amount of alternate experience. Requests for such a waiver must be submitted to NMFS Office of Protected Resources and must include written justification containing alternative experience. Alternate experience that may be considered includes but is not limited to: previous work experience conducting academic, commercial, or government-sponsored marine mammal visual and/or acoustic surveys; or previous work experience as a PSO/PAM operator. All PSOs and PAM operators should demonstrate good standing and consistently good performance of all assigned duties;

(3) PSOs must have visual acuity in both eyes (with correction of vision being permissible) sufficient enough to discern moving targets on the water's surface with the ability to estimate the target size and distance (binocular use is allowable); ability to conduct field observations and collect data according to the assigned protocols; sufficient training, orientation, or experience with

the construction operation to provide for personal safety during observations; writing skills sufficient to document observations, including but not limited to, the number and species of marine mammals observed, the dates and times of when in-water construction activities were conducted, the dates and time when in-water construction activities were suspended to avoid potential incidental take of marine mammals from construction noise within a defined shutdown zone, and marine mammal behavior; and the ability to communicate orally, by radio, or in-person, with project personnel to provide real-time information on marine mammals observed in the area;

(4) All PSOs must be trained in northwestern Atlantic Ocean marine mammal identification and behaviors and must be able to conduct field observations and collect data according to assigned protocols. Additionally, PSOs must have the ability to work with all required and relevant software and equipment necessary during observations (as described in paragraphs (b)(5) and (b)(6) of this section);

(5) All PSOs and PAM operators must successfully complete a relevant training course within the last 5 years, including obtaining a certificate of course completion;

(6) PSOs and PAM operators are responsible for obtaining NMFS' approval. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditionally-approved PSO or PAM operator may be one who has completed training in the last 5 years but has not yet attained the requisite field experience. An unconditionally approved PSO or PAM operator is one who has completed training within the last 5 years and attained the necessary experience (*i.e.*, demonstrate experience with monitoring for marine mammals at clearance and shutdown zone sizes similar to those produced during the respective activity). A conditionally approved PSO or PAM operator must be paired with an unconditionally approved PSO or PAM operator;

(7) At least one on-duty PSO for each activity (*e.g.*, foundation installation, cable landfall construction, and HRG surveys) must be designated as the Lead PSO. The Lead PSO must meet the minimum requirements described in 217.295(a)(2) through (5) and have a minimum of ninety days of at-sea experience working in the Northwest Atlantic Ocean and would be required to have no more than eighteen months elapsed since the conclusion of their last at-sea experience;

(8) PSOs for cable landfall construction (*i.e.*, vibratory pile installation and removal) and HRG surveys may be unconditionally or conditionally approved. PSOs and PAM operators for foundation installation must be unconditionally approved;

(9) LOA Holder must submit NMFS previously approved PSOs and PAM operators to NMFS Office of Protected Resources for review and confirmation of their approval for specific roles at least 30 days prior to commencement of the activities requiring PSOs/PAM operators or 15 days prior to when new PSOs/PAM operators are required after activities have commenced;

(10) For prospective PSOs and PAM operators not previously approved, or for PSOs and PAM operators whose approval is not current, LOA Holder must submit resumes for approval at least 60 days prior to PSO and PAM operator use. Resumes must include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO or PAM operator experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training;

(11) PAM operators are responsible for obtaining NMFS approval. To be approved as a PAM operator, the person must meet the following qualifications: The PAM operator must demonstrate that they have prior experience with real-time acoustic detection systems and/or have completed specialized training for operating PAM systems and detecting and identifying Atlantic Ocean marine mammals sounds, in particular: North Atlantic right whale sounds, humpback whale sounds, and how to deconflict them from similar North Atlantic right whale sounds, and other co-occurring species' sounds in the area including sperm whales; must be able to distinguish between whether a marine mammal or other species sound is detected, possibly detected, not detected and similar terminology must be used across companies/projects; where localization of sounds or deriving bearings and distance are possible, the PAM operators need to have demonstrated experience in using this technique; PAM operators must be independent observers (*i.e.*, not construction personnel); PAM operators must demonstrate experience with relevant acoustic software and equipment; PAM operators must have the qualifications and relevant experience/training to safely deploy and retrieve equipment and program the software, as necessary; PAM operators must be able to test software and

hardware functionality prior to operation; and PAM operators must have evaluated their acoustic detection software using the PAM Atlantic baleen whale annotated data set available at National Centers for Environmental Information (NCEI) and provide evaluation/performance metric;

(12) PAM operators must be able to review and classify acoustic detections in real-time (prioritizing North Atlantic right whales and noting detection of other cetaceans) during the real-time monitoring periods;

(13) PSOs may work as PAM operators and vice versa, pending NMFS-approval; however, they may only perform one role at any one time and must not exceed work time restrictions, which must be tallied cumulatively; and

(14) All PSOs and PAM operators must complete a Permits and Environmental Compliance Plan training and a 2-day refresher session that must be held with the PSO provider and Project compliance representative(s) prior to the start of in-water project activities (*e.g.*, HRG survey, foundation installation, cable landfall activities *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 all impact pile driving, vibratory 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) All PSOs must be located at the best vantage point(s) on any platform, as determined by the Lead PSO, in order to obtain 360-degree visual coverage of the entire clearance and shutdown zones around the activity area, and as much of the Level B harassment zone as possible. PAM operators may be located on a vessel or remotely on-shore, but must have the appropriate equipment (*i.e.*, computer station equipped with a data collection software system and acoustic data analysis software) available wherever they are stationed, and data or data products must be streamed in real-time or in near real-time to allow PAM operators to provide assistance to on-duty visual PSOs. During foundation installation activities, the PAM operator(s) must monitor to and past the clearance zone for large whales and would assist PSOs

in ensuring full coverage of the clearance and shutdown zones;

(3) 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;

(4) The PAM operator must inform the Lead PSO(s) on duty of animal detections approaching or within applicable ranges of interest to the activity occurring via the data collection software system, (*e.g.*, Mysticetus or similar system) who must be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.*, delay);

(5) 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-dedicated PSO vessel must be equipped with functional Big Eye binoculars (*e.g.*, 25 x 150; 2.7 view angle; individual ocular focus; height control); these must be pedestal mounted on the deck at the best vantage point that provides for optimal sea surface observation and PSO safety. PAM operators must have the appropriate equipment (*i.e.*, a computer station equipped with a data collection software system available wherever they are stationed) and use a NMFS-approved PAM system to conduct monitoring. PAM systems are approved through the PAM Plan as described in § 217.294(c)(17);

(6) During periods of low visibility (*e.g.*, darkness, rain, fog, poor weather conditions, *etc.*), PSOs must use alternative technology (*i.e.*, infrared or thermal cameras) to monitor the clearance and shutdown zones as approved by NMFS;

(7) 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; and

(8) During daylight hours when equipment is not operating, LOA Holder must ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

(c) *PSO and PAM operator requirements during WTG and OSS foundation installation.* The following measures apply to PSOs and PAM operators during WTG and OSS 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. If PSOs cannot visually monitor the minimum visibility zone prior to pile driving at all times using the equipment described in paragraphs (b)(5) and (6) 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 pile driving and at least three on-duty PSOs must be stationed on each dedicated PSO vessel. 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 foundation pile driving in accordance with a NMFS-approved PAM Plan;

(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.

(d) *PSO requirements during cable landfall construction.* The following measures apply to PSOs during cofferdam and goal post installation and removal and must be implemented by LOA Holder:

(1) At least two PSOs must be on active duty during all activities related to the installation and removal of cofferdams and goal posts; and

(2) PSOs must monitor the clearance zone for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles and casing pipe and for 30 minutes after all pile driving activities have ceased. Sheet pile or casing pipe

installation must only commence when visual clearance zones are fully visible (e.g., not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of pile driving.

(e) *PSO requirements during HRG surveys.* The following measures apply to PSOs during HRG surveys using Compressed High Intensity Radiated Pulse (CHIRPs), boomers, and sparkers and must be implemented by LOA Holder:

(1) Between four and six PSOs must be present on every 24-hour survey vessel and two to three PSOs must be present on every 12-hour survey vessel;

(2) At least one PSO must be on active duty monitoring during HRG surveys conducted during daylight (i.e., from 30 minutes prior to civil sunrise through 30 minutes following civil sunset) and at least two PSOs must be on active duty monitoring during HRG surveys conducted at night;

(3) PSOs on HRG vessels must begin monitoring 30 minutes prior to activating acoustic sources, during the use of these acoustic sources, and for 30 minutes after use of these acoustic sources has ceased;

(4) Any observations of marine mammals must be communicated to PSOs on all nearby survey vessels during concurrent HRG surveys; and

(5) During daylight hours when survey equipment is not operating, LOA Holder must ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

(f) *Monitoring requirements during fisheries monitoring surveys.* The following measures apply during fisheries monitoring surveys and must be implemented by LOA Holder:

(1) All captains and crew conducting fishery surveys must be trained in marine mammal detection and identification; and

(2) Marine mammal monitoring must be conducted within 1 nmi from the planned survey location by the trained captain and/or a member of the scientific crew for 15 minutes prior to deploying gear, throughout gear deployment and use (unless using ropeless gear), and for 15 minutes after haul back.

(g) *Reporting.* LOA Holder must comply with the following reporting measures:

(1) Prior to initiation of any specified 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., pile driving, construction surveys), use of any noise attenuation device(s), and specific phase of activity (e.g., ramp-up of HRG equipment, HRG acoustic source on/off, soft-start for pile

driving, active pile driving, *etc.*); the marine mammal occurrence in Level A harassment or Level B harassment zones; the description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.*, delay, shutdown, *etc.*) and time and location of the action; other human activity in the area, and; other applicable information, as required in any LOA issued under § 217.296;

(4) If a marine mammal is acoustically detected during PAM monitoring, the following information must be recorded and reported to NMFS: location of hydrophone (latitude and longitude; in Decimal Degrees) and site name; bottom depth and depth of recording unit (in meters); recorder (model & manufacturer) and platform type (*i.e.*, bottom-mounted, electric glider, *etc.*), and instrument ID of the hydrophone and recording platform (if applicable); time zone for sound files and recorded date/times in data and metadata (in relation to Universal Coordinated Time (UTC); *i.e.*, Eastern Standard Time (EST) time zone is UTC-5); duration of recordings (start/end dates and times; in International Organization for Standardization (ISO) 8601 format, yyyy-mm-ddTHH:MM:SS.sssZ); deployment/retrieval dates and times (in ISO 8601 format); recording schedule (must be continuous); hydrophone and recorder sensitivity (in dB re. 1 microPascal (μPa)); calibration curve for each recorder; bandwidth/sampling rate (in Hz); sample bit-rate of recordings; and detection range of equipment for relevant frequency bands (in meters);

(i) For each detection, the following information the following information must be noted: species identification (if possible); call type and number of calls (if known); temporal aspects of vocalization (date, time, duration, *etc.*; date times in ISO 8601 format); confidence of detection (detected, or possibly detected); comparison with any concurrent visual sightings; location and/or directionality of call (if determined) relative to acoustic recorder or construction activities; location of recorder and construction activities at time of call; name and version of detection or sound analysis software used, with protocol reference; minimum and maximum frequencies viewed/monitored/used in detection (in Hz); and name of PAM operator(s) on duty;

(5) LOA Holder must compile and submit weekly reports during foundation installation to NMFS Office of Protected Resources that document the daily start and stop of all pile driving associated with the Project; the

start and stop of associated observation periods by PSOs; details on the deployment of PSOs; a record of all detections of marine mammals (acoustic and visual); any mitigation actions (or if mitigation actions could not be taken, provide reasons why); and details on the noise attenuation system(s) used and its performance. Weekly reports are due on Wednesday for the previous week (Sunday 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;

(6) 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). Full PAM detection data and metadata must also be submitted monthly on the 15th of every month for the previous month via the webform on the NMFS North Atlantic Right Whale Passive Acoustic Reporting System website at <https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>;

(7) LOA Holder must submit a draft annual report to NMFS Office of Protected Resources no later than 90 days following the end of a given calendar year. LOA Holder must provide a final report within 30 days following resolution of NMFS' comments on the draft report. The draft and final reports must detail the following: the total number of marine mammals of each species/stock detected and how many were within the designated Level A harassment and Level B harassment zone(s) with comparison to authorized take of marine mammals for the associated activity 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, 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.*, foundation 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. The final annual report must be prepared and submitted within 30 calendar days following the receipt of any comments from NMFS on the draft report. If no comments are received from NMFS within 60 calendar days of NMFS' receipt of the draft report, the report must be considered final;

(8) LOA Holder must submit its draft 5-year report to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted within 90 calendar days of the completion of activities occurring under the LOA. A 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS Office of Protected Resources comments on the draft report. If no comments are received from NMFS Office of Protected Resources within 60 calendar days of NMFS Office of Protected Resources receipt of the draft report, the report shall be considered final;

(9) LOA Holder must provide the initial results of the complete 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 any subsequent foundation installation, but no later than 48 hours after each completed foundation installation event. The report must include, at minimum: hammer energies/schedule used during pile driving, including, the total number of strikes and the maximum hammer energy; the model-estimated acoustic ranges ($R_{0.5\%}$) 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 (L50) and L5 (95 percent exceedance) statistics for each metric; estimated marine mammal Level A harassment and Level B harassment acoustic isopleths, calculated using the maximum-over-depth L5 (95 percent exceedance level, maximum of both hydrophones) of the associated sound metric; comparison of modeled results assuming 10-dB attenuation against the

measured marine mammal Level A harassment and Level B harassment acoustic isopleths; estimated transmission loss coefficients; pile identifier name, location of the pile and each hydrophone array in latitude/longitude; depths of each hydrophone; one-third-octave band single strike SEL spectra; if filtering is applied, full filter characteristics must be reported; and hydrophone specifications including the type, model, and sensitivity. LOA Holder must also report any immediate observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices. If any *in-situ* calibration checks for hydrophones reveal a calibration drift greater than 0.75 dB, pistonphone calibration checks are inconclusive, or calibration checks are otherwise not effectively performed, LOA Holder must indicate full details of the calibration procedure, results, and any associated issues in the 48-hour interim reports;

(10) LOA Holder must conduct abbreviated SFV for all foundation installations for which the complete SFV monitoring is not carried out, whereas a single acoustic recorder must be placed at an appropriate distance from the pile, in alignment with the completed Biological Opinion. All results must be included in the weekly reports. Any indications that distances to the identified Level A harassment and Level B harassment thresholds for marine mammals were exceeded must be addressed by LOA Holder, including an explanation of factors that contributed to the exceedance and corrective actions that were taken to avoid exceedance on subsequent piles;

(11) The final results of all SFV measurements from each foundation installation must be submitted as soon as possible, but no later than 90 days following completion of all annual SFV measurements. The final reports must include all details included in the interim report and descriptions of any notable occurrences, explanations for results that were not anticipated, or actions taken during foundation installation. 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; 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 (COP), 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;

(12) 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;

(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 following completion of activities requiring PAM for mitigation via the International Organization for Standardization (ISO) standard metadata forms available on the NMFS Passive Acoustic Reporting System website (<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 real-time systems must also be sent to the National Centers for Environmental Information (NCEI) for archiving within 90 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, in specific circumstances, including but not limited to the following:

(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, the U.S. Coast Guard, 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 circumstances arise where calling NMFS is not possible, reports must be made to the U.S. Coast Guard via channel 16 or through the WhaleAlert app (<http://www.whalealert.org/>). The sighting report must include the time, date, and location of the sighting, number of whales, animal description/certainty of sighting (provide photos/video if taken), Lease Area/project name, PSO/personnel name, PSO provider company (if applicable), and reporter's contact information.

(ii) If a North Atlantic right whale is observed at any time by PSOs or project personnel, LOA Holder must submit a summary report to NMFS Greater Atlantic Regional Fisheries (GARFO; nmfs.gar.incidental-take@noaa.gov), NMFS Office of Protected Resources,

and NMFS Northeast Fisheries Science Center (NEFSC; ne.rv.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 a large whale other than a North Atlantic right whale is observed at any time by PSOs or project personnel, LOA Holder must report the sighting to the WhaleAlert app (<http://www.whalealert.org/>);

(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); if in the Greater Atlantic region (Maine to Virginia), to NMFS Greater Atlantic Regional Fisheries Office (GARFO; nmfs.gar.incidental-take@noaa.gov, nmfs.gar.stranding@noaa.gov); if in the Southeast region (North Carolina to Florida), to NMFS Southeast Regional Office (SERO; secmammalreports@noaa.gov); and to the U.S. Coast Guard, as soon as feasible but within 24-hours. The report (via phone or email) must include contact (name, phone number, etc.), the time, date, and location of the first discovery (and updated location information if known and applicable); species identification (if known) or description of the animal(s) involved; condition of the animal(s) (including carcass condition if the animal is dead); observed behaviors of the animal(s), if alive; if available, photographs or video footage of the animal(s); and general circumstances under which the animal was discovered; and

(v) 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, 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) Any lost gear associated with the fishery surveys will be reported to the NOAA Greater Atlantic Regional Fisheries Office Protected Resources Division (nmfs.gar.incidentaltake@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. All reasonable efforts, that do not compromise human safety, must be undertaken to recover gear.

§ 217.296 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, LOA Holder must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed February 4, 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 an LOA, LOA Holder must apply for and obtain a modification of the LOA as described in § 217.297.

(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.

(f) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.297 Modifications of Letter of Authorization.

(a) An LOA issued under §§ 217.292 and 217.296 or this section for the activities identified in § 217.290(a) shall be modified upon request by LOA Holder, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS 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 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 may publish a notice of proposed modified LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 217.292 and 217.296 or this section for the activities identified in § 217.290(a) may be modified by NMFS under the following circumstances:

(1) Through adaptive management, NMFS may modify (including delete, modify, or add to) the existing

mitigation, monitoring, or reporting measures (after consulting with LOA Holder regarding the practicability of the modifications), if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include, but are not limited to:

(A) Results from LOA Holder's monitoring(s);

(B) Results from other marine mammals and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in the LOA issued pursuant to §§ 217.292 and 217.296 or this section, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 217.298–217.299 [Reserved]

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Part III

Environmental Protection Agency

40 CFR Part 432

Clean Water Act Effluent Limitations Guidelines and Standards for the
Meat and Poultry Products Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 432

[EPA-HQ-OW-2021-0736; FRL-8885-01-OW]

RIN 2040-AG22

Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing a regulation to revise the technology-based effluent limitations guidelines and standards (ELGs) for the meat and poultry products (MPP) point source category. The proposed rule would improve water quality and protect human health and the environment by reducing the discharge of nutrients and other pollutants to the nation's surface waters. EPA is proposing several regulatory options, including the preferred option discussed in this notice. The preferred option is estimated to cost \$232 million annually and reduce pollutant discharges by approximately 100 million pounds per year.

DATES: Comments must be received on or before March 25, 2024.

Public hearing: EPA will hold two public hearings about this proposed rule on January 24, 2024 and January 31, 2024. Visit EPA's website at <https://www.epa.gov/eg/meat-and-poultry-products-effluent-guidelines-2024-proposed-rule> for additional information about the public hearings and for any potential changes to the public hearing schedule.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2021-0736, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand Delivery or Courier:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Steve Whitlock, Engineering and Analysis Division, Office of Water (4303T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–566–1541; email address: Whitlock.Steve@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, EPA defines terms and acronyms used in Appendix A of this preamble.

Supporting Documentation. The proposed rule is supported by several documents, including:

- **Technical Development Document for Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (TDD),** Document No. 821–R–23–011. This report summarizes the technical and engineering analyses supporting the proposed rule including cost methodologies, pollutant removal estimates, non-water quality environmental impacts, and calculation of the proposed effluent limitations.

- **Environmental Assessment Analysis for Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (EA Report),** Document No. 821–R–23–012. This report summarizes the potential environmental and human health impacts estimated to result from implementation of the proposed rule. The report also describes the environmental justice analysis conducted.

- **Benefit and Cost Analysis for Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category (BCA Report),** Document No. 821–R–23–013. This report summarizes the societal benefits and costs estimated to result from implementation of the proposed rule.

- **Regulatory Impact Analysis for Proposed Effluent Limitations Guidelines and Standards for the Meat**

and Poultry Products Point Source Category (RIA), Document No. 821–R–23–014. This report presents a profile of the MPP industry, a summary of estimated costs and impacts associated with the proposed rule, and an assessment of the potential impacts on employment and small businesses.

- **Docket Index for the Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category.** This document provides a list of the additional memoranda, references, and other information EPA relied on for the proposed revisions to the MPP ELGs.

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I. Executive Summary

A. Purpose of Rule

EPA is proposing revisions to a regulation that would apply to wastewater discharges from meat and poultry products (MPP) facilities. The MPP industry discharges large quantities of nutrients, such as nitrogen and phosphorus, that enter the Nation's waters. Nutrient pollution is one of the most widespread, costly, and challenging environmental problems

impacting water quality in the United States. Excessive nitrogen and phosphorus in surface water can lead to a variety of problems, including eutrophication and harmful algal blooms, that have negative impacts on human health and the environment. EPA reported in *Preliminary Effluent Guidelines Program Plan 15* (Preliminary Plan 15, USEPA, 2021, EPA-821-R-21-003) that the MPP industry discharges the highest phosphorus levels and second highest nitrogen levels of all industrial categories.

The MPP industry has an estimated 5,055 facilities across the country that engage in meat and/or poultry slaughter, further processing, and/or rendering. Proposed requirements would reduce the amount of nutrients and other pollutants discharged from the MPP industry, both directly into waters of the United States under state or EPA-issued NPDES permits and indirectly via sanitary sewers or transport to and through municipal sewage treatment plants, also known as Publicly Owned Treatment Works (POTWs). Importantly, this rule would advance progress on environmental justice goals.

EPA initially promulgated the MPP ELGs in 1974 and amended the regulation in 2004. It currently applies only to direct dischargers (those that discharge directly to a water of the United States), and only to about 150 of the 5,055 MPP facilities in the industry. Phosphorus is not regulated under the current ELGs. Pollutants in the wastewater from MPP indirect dischargers, which are not currently regulated by the ELGs, can interfere with or pass through POTWs. Research also shows communities near MPP facilities are likely to experience multiple environmental stressors, and in these communities, minority and low-income percentiles exceed national averages. Additionally, some MPP facilities are already using available and affordable technologies that can be used at additional facilities nationwide to reduce pollutant discharges from the MPP industry.

EPA is considering a range of options in this rulemaking. The options include more stringent effluent limitations on total nitrogen, new effluent limitations on total phosphorus, updated effluent limitations for other pollutants, new pretreatment standards for indirect dischargers, and revised production thresholds for some of the subcategories in the existing rule. EPA is also requesting comment on potential effluent limitations on chlorides for high chloride waste streams, establishing effluent limitations for *E.*

coli for direct dischargers, and including conditional limits for indirect dischargers that discharge to POTWs that remove nutrients to the extent that would be required under the proposed pretreatment standards in certain regulatory options. Each option would result in different levels of pollutant reduction and costs.

EPA is proposing a preferred regulatory option (described in section VII below) and seeking comment on the other options. EPA estimates the preferred regulatory option (Option 1) would reduce pollutant discharges by approximately 100 million pounds per year. EPA predicts the preferred regulatory option would result in environmental and ecological improvements, including reduced adverse impacts to wildlife and human health.

EPA estimates that the proposed rule based on the preferred regulatory option will cost \$232 million per year in social costs and result in \$90 million per year in monetized benefits using a 3 percent discount rate and \$227 million per year in social costs and result in \$85 million per year in monetized benefits using a 7 percent discount rate. The benefit numbers are based on modeling water quality improvements in five regional water basins and then extrapolating the benefits results from those basins to remainder of the country.¹ The benefit estimates also include the national effects of increased air pollution and greenhouse gas emissions under the rule.

Not all costs and benefits can be fully quantified and monetized, and importantly, EPA anticipates the proposed rule would also generate important unquantified benefits (*e.g.*, improved habitat conditions for plants, invertebrates, fish, amphibians, and the wildlife that prey on aquatic organisms). Furthermore, while some health benefits and willingness to pay for water quality improvements have been quantified and monetized, those estimates may not fully capture all important water quality-related benefits.

B. Summary of Proposed Rule

EPA proposes to revise the ELGs for the MPP industry based on Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), Best Available Technology Economically Achievable

(BAT), Best Available Demonstrated Control Technology (BADCT) for New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS). BPT, BCT, and BAT would apply to existing facilities that directly discharge to waters of the U.S. BADCT/NSPS would apply to new sources that directly discharge to waters of the U.S. PSES and PSNS would apply to existing and new sources, respectively, that discharge indirectly via POTWs.

EPA is proposing three regulatory options that build on the current MPP ELGs. Option 1, which is EPA's preferred regulatory option in this proposed rule, would include new phosphorus limits and revised nitrogen limits² for large direct dischargers and new pretreatment standards on certain conventional pollutants for large indirect dischargers. Here, large refers to the existing production thresholds in the current MPP ELGs. Option 2 would include the requirements in Option 1 and add nutrient limits for indirect discharging first processors and renderers above specified production thresholds. Option 3 would be similar to Option 2 but with lower production thresholds for the nutrient limits and conventional pollutant limits for both direct and indirect dischargers. In contrast to Options 1 and 2, Option 3 would use lower production thresholds than those in the existing rule. All three options would minimize impacts to small firms, based on the impact thresholds described in EPA's Regulatory Flexibility Act guidance for assessing impacts to small firms in terms of a cost to revenue ratio. While Option 3 includes limits for more facilities than Options 1 and 2, it is similarly structured to avoid significant impacts to small firms. Option 3 would achieve the greatest amount of pollutant reductions of the three options. Option 3 would also simplify the existing rule by utilizing the same size thresholds for all subcategories. For example, total phosphorus limits would apply to direct discharging facilities in all subcategories producing greater than or equal to 10 million pounds per year under Option 3. Under Options 2 and 3, EPA also proposes to include "conditional limits," which would allow an exemption from nutrient pretreatment standards for indirect dischargers that are discharging to POTWs that have

nutrient removal capabilities that result in equivalent nutrient removal.

The following discussion is organized by discharge type (direct or indirect) and by facility status (existing or new):

Direct Discharges From Existing Sources

Options 1 and 2: BAT would include new phosphorus effluent limitations based on chemical removal and more stringent nitrogen effluent limitations based on biological treatment to achieve full denitrification. BCT and BPT for the conventional pollutants (biochemical oxygen demand (BOD), total suspended solids (TSS), oil & grease, pH) limits would remain unchanged from the current MPP ELG. These limits would apply to direct discharging facilities based on the same production thresholds as the existing rule: 50 million pounds per year of finished product produced for meat further processors (Subcategories F–I), 50 million pounds per year of live weight killed (LWK) for meat slaughtering (Subcategories A–D), 100 million pounds per year of LWK for poultry slaughtering (Subcategories K), 7 million pounds of finished product per year for poultry further processors (Subcategory L), and 10 million pounds per year of raw material processed for renderers (Subcategory J). The limits for facilities in Subcategory E would not be changed.

Option 3: BAT would include the same BAT requirements as Option 1, with lower production thresholds for applicability. Specifically, BAT would include new phosphorus effluent limitations based on chemical removal for facilities in all subcategories that are producing greater than or equal to 10 million pounds per year. Additionally, BAT would include new and/or more stringent nitrogen limits based on biological treatment to achieve full denitrification for facilities in all subcategories producing greater than or equal to 20 million pounds per year. BAT for ammonia as N limits and BCT and BPT limits for conventional pollutants (BOD, TSS, oil & grease, fecal coliform, pH) limits would remain unchanged from the current MPP ELGs. The limits for facilities in Subcategory E would not be changed.

Indirect Discharges to POTWs From Existing Sources

Option 1: PSES would include new conventional pollutant limits based on BPT and BCT limits for BOD, TSS, and oil & grease based on screening and dissolved air flotation (DAF) technology. Under this option, pretreatment standards would apply to facilities producing greater than: 50

¹ See Section 3 of the Benefit and Costs Analysis for descriptions of the water quality modeling and monetized benefit calculations. See Appendix E of the Benefit and Costs Analysis for descriptions of the approach for extrapolating the regional water quality benefits to the rest of the country.

² The terms nitrogen and phosphorus refer to total nitrogen and total phosphorus throughout this document.

million pounds per year of finished product for meat further processors (Subcategories F–I), 50 million pounds per year of LWK for meat slaughtering (Subcategories A–D), 100 million pounds per year of LWK for poultry slaughtering (Subcategory K), 7 million pounds per year of finished product for poultry further processors (Subcategory L), and 10 million pounds per year of raw material processed by renderers (Subcategory J). No new PSES based on pretreatment standards for nitrogen and phosphorus would be established under Option 1.

Option 2: Option 2 would include the same PSES requirements for conventional pollutants as Option 1. Additionally, PSES would include new pretreatment standards based on BAT for phosphorus based on chemical removal and new nitrogen pretreatment standards based on biological treatment to achieve full denitrification. The nitrogen and phosphorus PSES requirements would include facilities with production thresholds greater than or equal to: 200 million pounds per year of LWK for meat slaughtering (Subcategories A–D), 200 million pounds per year of LWK for poultry slaughtering (Subcategory K), and 350 million pounds per year processed by renderers (Subcategory J).

Option 3: Option 3 would include the same PSES requirements as Option 2,

with lower production thresholds for applicability. Specifically, PSES would include new conventional pollutant pretreatment standards based on BPT/BCT for BOD, TSS, and oil & grease based on screening and DAF techniques for all indirect MPP facilities producing greater than 5 million pounds per year. Additionally, PSES would include new phosphorus and nitrogen pretreatment standards based on BAT for all indirect MPP facilities producing greater than 30 million pounds per year.

Direct Discharges From New Sources

Under all options, NSPS based on BADCT would be equal to BAT, BPT, and BCT. Thus, Options 1, 2 and 3 would contain the same requirements for existing and new direct discharging facilities.

Indirect Discharges From New Sources

Under all options, PSNS would be equal to PSES. Thus, Options 1, 2, and 3 would contain the same requirements for existing and new indirect discharging facilities.

Additional details about the proposed ELGs are described in Section VII of this preamble.

II. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2021–0736, at <https://www.regulations.gov>

(our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

III. General Information

A. Does this action apply to me?

Entities potentially regulated by any final rule following this action include:

TABLE III–1

Category	Example of regulated entity	North American Industry Classification System (NAICS) Code
Industry	Facilities engaged in slaughtering, further processing, or rendering of meat and poultry products, which may include the following sectors:	
	Meat Packing Plants	31161
	Animal (except Poultry) Slaughtering	311611
	Meat Processed from Carcasses	311612
	Sausages and Other Prepared Meat Products	311612
	Poultry Slaughtering and Processing	311615
	Meat & Meat Product Wholesalers	422470
	Poultry Processing	311615
	Rendering and Meat By-Product Processing	311613
	Support Activities for Animal Production	11521
	Prepared Feed and Feed Ingredients for Animals and Fowls, Except Dogs and Cats.	311119
	Dog and Cat Food Manufacturing	311111
	Other Animal Food Manufacturing	311119
	All Other Miscellaneous Food Manufacturing	311999
	Animal and Marine Fats and Oils	311613
	Livestock Services, Except Veterinary	311611

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table includes the types of entities that the EPA is now aware could potentially be

regulated by this action. Other types of entities not included could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR

432.1, 432.10, 432.20, 432.30, 432.40, 432.50, 432.60, 432.70, 432.80, 432.90, 432.100, 432.110, and 432.120 and the definitions in 40 CFR 432.2. If you have questions regarding the applicability of this action to a particular entity, consult

the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

The Agency is proposing to revise the existing MPP ELGs and is soliciting comment on possible revisions and additions to the ELGs for existing and new sources in the MPP point source category.

C. What is the Agency's authority for taking this action?

EPA is proposing to promulgate this rule under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

D. What are the incremental costs and benefits of this action?

This proposed action is estimated to cost \$232 million per year in social costs and result in \$90 million per year in monetized benefits using a 3 percent discount rate and \$227 million per year in social costs and result in \$85 million per year in monetized benefits using a 7 percent discount rate. The current benefit numbers reflect the national effects of increased air pollution and greenhouse gas emissions under the rule. EPA also expects that there will be additional non-monetized benefits that result from the proposed action. See the Benefits Cost Analysis for additional information on monetization and quantification of health, ecological, market, and economic productivity benefits.

IV. Background

A. Clean Water Act

Congress passed the Federal Water Pollution Control Act Amendments of 1972, also known as the Clean Water Act ("CWA" or "the Act"), to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. 1251(a)). The CWA establishes a comprehensive program for protecting our nation's waters. Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the United States (WOTUS), except as authorized under the CWA. Under section 402 of the CWA, discharges may be authorized through a National Pollutant Discharge Elimination System (NPDES) permit. The CWA establishes a two-pronged approach for these permits: technology-based controls that establish the floor of performance for all dischargers, and water quality-based limits where the technology-based limits are insufficient for the discharge to meet applicable water quality standards. To serve as the basis for the

technology-based controls, the CWA authorizes EPA to establish nationally applicable, technology-based effluent limitations guidelines and new source performance standards for discharges from different categories of point sources, such as industrial, commercial, and public sources.

Direct dischargers must comply with effluent limitations in NPDES permits. Technology-based effluent limitations in NPDES permits are derived from effluent limitations guidelines (CWA sections 301(b) and 304, 33 U.S.C. 1311(b) and 1314) and new source performance standards (CWA section 306, 33 U.S.C. 1316) promulgated by EPA, or based on best professional judgment (BPJ) where EPA has not promulgated an applicable effluent limitations guideline or new source performance standard (CWA section 402(a)(1)(B), 33 U.S.C. 1342(a)(1)(B); 40 CFR 125.3(c)). The effluent limitations guidelines and new source performance standards established by regulation for categories of industrial dischargers are based on the degree of control that can be achieved using various levels of pollution control technology, as specified in the Act.

The CWA also authorizes EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from categories of indirect dischargers (*i.e.*, facilities that introduce wastewater to POTWs), as outlined in CWA sections 307(b) and (c), and 304(g) (33 U.S.C. 1317(b) and (c), and 1314(g)). EPA establishes national categorical pretreatment standards for those pollutants in wastewater from indirect dischargers that may pass through, interfere with, or are otherwise incompatible with POTW operations (CWA section 307(b), 33 U.S.C. 1317(b)). Generally, in determining whether pollutants pass through a POTW when considering the establishment of categorical pretreatment standards, EPA compares the percentage of pollutant removed by typical POTWs achieving secondary treatment with the percentage of the pollutant removed by facilities meeting the candidate technology basis (*e.g.*, BPT or BAT) (46 FR 9408, 9416 (Jan. 28, 1981)). A pollutant is deemed to pass through a POTW when the average percentage removed by well-operated POTWs performing secondary treatment is less than the average percentage removed by direct dischargers operating the BPT/BAT technology basis. Pretreatment standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment (CWA section 301(b) and 33 U.S.C.

1311(b)). The legislative history of the 1977 CWA amendments explains that pretreatment standards are technology-based and analogous to technology-based effluent limitations for direct dischargers. As further explained in the legislative history, the combination of pretreatment and treatment by the POTW is intended to achieve the level of treatment that would be required if the industrial source were making a direct discharge (Conf. Rep. No. 95-830, at 87 (1977), reprinted in U.S. Congress, Senate Committee on Public Works (1978), *A Legislative History of the CWA of 1977*, Serial No. 95-14 at 271 (1978)). For categorical pretreatment standards, EPA's approach for passthrough satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers; and (2) that the treatment capability and performance of the POTWs be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers (CWA sections 301(b)(1)(A) and 301(b)(1)(E) (33 U.S.C. 1311(b)(1)(A) and 1311(b)(1)(E))). In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

EPA promulgates national ELGs for major industrial categories for three classes of pollutants: (1) Conventional pollutants (*i.e.*, BOD, TSS, oil & grease, fecal coliform, and pH), as outlined in CWA section 304(a)(4) (33 U.S.C. 1314(a)(4) and 40 CFR 401.16); (2) toxic pollutants (*e.g.*, toxic metals such as arsenic, mercury, selenium, and chromium; toxic organic pollutants such as benzene, benzo-a-pyrene, phenol, and naphthalene), as outlined in CWA section 307(a) (33 U.S.C. 1317(a), 40 CFR 401.15, and 40 CFR 423 appendix A); and (3) nonconventional pollutants, which are those pollutants that are not categorized as conventional or toxic (*e.g.*, ammonia-N, nitrogen, phosphorus, and total dissolved solids (TDS)).

B. Effluent Limitations Guidelines and Standards (ELGs)

EPA develops ELGs that are technology-based regulations for a category of dischargers. EPA bases these regulations on performance of control and treatment technologies in light of the factors specified in CWA section 304(b) and 306 (33 U.S.C. 1314(b), 1316), but after the limitations and standards are established, dischargers may use any technology that meets the limitations and standards. The legislative history of CWA section 304(b) (33 U.S.C. 1314(b)), which is the heart of the effluent guidelines program,

describes the need to press toward higher levels of control through research and development of new processes, modifications, replacement of obsolete plants and processes, and other improvements in technology, taking into account the cost of controls. Congress has also stated that EPA does not consider water quality impacts on individual water bodies as the guidelines are developed (Statement of Senator Muskie, October 4, 1972, reprinted in *A Legislative History of the Water Pollution Control Act Amendments of 1972*, at 170. (U.S. Senate, Committee on Public Works, Serial No. 93–1, January 1973); *Southwestern Elec. Power Co. v. EPA*, 920 F.3d at 1005, “The Administrator must require industry, regardless of a discharge’s effect on water quality, to employ defined levels of technology to meet effluent limitations.” (citations and internal quotations omitted). CWA sections 304(b), 304(g), and 306(b) (33 U.S.C. 1314(b), 1314(g) and 1316(b)) authorize revision of ELGs where appropriate.

The CWA specifies four types of technology-based ELGs applicable to direct dischargers and two types of pretreatment standards applicable to indirect dischargers, referred to collectively as “effluent limitations guidelines and standards (ELGs)”. These ELGs are summarized below.

1. Best Practicable Control Technology Currently Available (BPT)

For existing direct dischargers, the Act specifies two increasingly-stringent levels of control. The first level of control, BPT, applies to all pollutants (conventional, toxic, and nonconventional pollutants). Traditionally, as is consistent with the statute, its legislative history and caselaw, EPA defines “currently available” based on the average of the best performance of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics (*Chem. Mfrs. Assn. v. EPA*, 870 F.2d 177, 207–208 (1989)). The statute specifies a number of factors for consideration in establishing or revising BPT: the cost of achieving effluent reductions in relation to the effluent reduction benefits, the age of equipment and facilities, the processes employed, the engineering aspects of the control technologies, process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate (CWA section 304(b)(1)(B), 33 U.S.C. 1314(b)(1)(B)). If, however, existing performance is uniformly

inadequate, EPA may establish limitations based on higher levels of control than what is currently in place in an industrial category, based on an Agency determination that the technology is available in another category or subcategory and can be practicably applied.

2. Best Conventional Pollutant Control Technology (BCT)

BCT represents the second level of stringency for controlling discharge of conventional pollutants. In addition to other factors specified in CWA section 304(b)(4)(B) (33 U.S.C. 1314(b)(4)(B)), the CWA requires that EPA establish BCT limitations after consideration of a two-part “cost-reasonableness” test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974 (July 9, 1986)). The Act designates the following as conventional pollutants: BOD, TSS, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional (CWA section 304(a)(4); 33 U.S.C. 1314(a)(4)). The Administrator designated oil & grease as an additional conventional pollutant (44 FR 44501 (July 30, 1979) and 40 CFR 401.16).

3. Best Available Technology Economically Achievable (BAT)

BAT represents the second level of stringency for controlling discharge of toxic and nonconventional pollutants (including nutrients). Courts have referred to this as the CWA’s “gold standard” for controlling discharges from existing sources (*Southwestern Elec. Power Co. v. EPA*, 920 F.3d at 1003). In general, BAT represents the best available, economically achievable performance of facilities in the industrial subcategory or category, considering the factors specified in CWA section 304(b) (33 U.S.C. 1314(b)). As the statutory phrase intends, EPA considers the technological availability and economic achievability in determining what level of control represents BAT (CWA section 301(b)(2)(A), 33 U.S.C. 1311(b)(2)(A)). The statute specifies a number of factors for consideration in establishing or revising BAT: the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements, and such other factors as the Administrator deems appropriate (CWA Section 304(b)(2)(B), 33 U.S.C. 1314(b)(2)(B)). The Agency retains considerable discretion in assigning the weight to be accorded these factors (*Weyerhaeuser Co. v.*

Costle, 590 F.2d 1011, 1045 (D.C. Cir. 1978)). EPA usually determines economic achievability based on the effect of the cost of compliance with BAT limitations on overall industry and subcategory financial conditions (*Chem. Mfrs. Assn. v. EPA*, 870 F.2d 177, 251–52 (5th Cir. 1988)).

BAT reflects the highest performance in the industry and may reflect a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category, bench scale or pilot plant studies, or foreign plants (*Southwestern Elec. Power Co. v. EPA*, 920 F.3d at 1006; *American Paper Inst. v. Train*, 543 F.2d 328, 353 (D.C. Cir. 1976); *American Frozen Food Inst. v. Train*, 539 F.2d 107, 132 (D.C. Cir. 1976)). BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice (*American Frozen Foods*, 539 F.2d at 132, 140; *Reynolds Metals Co. v. EPA*, 760 F.2d 549, 562 (4th Cir. 1985); *California & Hawaiian Sugar Co. v. EPA*, 553 F.2d 280, 285–88 (2nd Cir. 1977)).

4. New Source Performance Standards (NSPS)

NSPS reflect effluent reductions that are achievable based on BADCT. Owners of new sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the BADCT for all pollutants (that is, conventional, nonconventional, and toxic pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements (CWA section 306(b)(1)(B), 33 U.S.C. 1316(b)(1)(B)).

5. Pretreatment Standards for Existing Sources (PSES)

CWA section 307(b) (33 U.S.C. 1317(b)), of the Act calls for EPA to issue pretreatment standards for discharges of pollutants to POTWs. PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. Categorical pretreatment standards are technology-based and are analogous to BPT and BAT effluent limitations guidelines, and thus, the Agency typically considers the same factors in promulgating PSES as it considers in promulgating BPT/BAT. The General Pretreatment Regulations,

which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. These regulations establish general pretreatment standards that apply to all non-domestic dischargers (52 FR 1586 (January 14, 1987)).

6. Pretreatment Standards for New Sources (PSNS)

CWA section 307(c) (33 U.S.C. 1317(c)) calls for EPA to promulgate PSNS. Such pretreatment standards must prevent the discharge of any pollutant into a POTW that may interfere with, pass through, or may otherwise be incompatible with the POTW. EPA promulgates PSNS based on BADCT for new sources. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency typically considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

C. Actions Leading to Proposed Revisions to the MPP ELGs

1. National Review of Nutrient Discharges From Industrial Sources (USEPA. 2019. EPA-821-R-19-005)

EPA conducted a cross-industry review of publicly available discharge monitoring report (DMR) and toxics release inventory (TRI) data from 2015 on nutrient discharges from industrial point source categories. This review identified industries, based on their discharges of nutrients in wastewater and the potential to reduce their nutrient discharges, that may be candidates for ELG development or revision and prioritized them for further review. EPA then ranked industrial categories by the nutrient loads in their wastewater discharges, specifically looking at the median facility load and number of facilities reporting discharges. The MPP industry ranked as one of the highest in the analysis for total nitrogen and total phosphorus, leading EPA to focus on this industry (USEPA. 2019. EPA-HQ-OW-2019-0618).

To better understand the MPP industry and related nutrient sources, discharges, and treatment, EPA reviewed historical documentation supporting the development of the existing MPP ELGs, analyzed 2015 DMR and TRI data, and contacted several MPP facilities. Many MPP facilities discharging high amounts of nutrients are located in EPA Regions 4 and 5, which provided information on the development of nutrient permit limits

and current practices for managing wastewater containing nutrients at MPP facilities. Many of these facilities had permits with water-quality-based ammonia limits more stringent than the existing 2004 MPP ELGs. More than half of the permits reviewed also included water quality-based limits or monitoring requirements for total Kjeldahl nitrogen (TKN), nitrate/nitrite, and/or total phosphorus, which are not regulated under the 2004 MPP ELG.

EPA found that some MPP facilities are performing better than the existing 2004 ELG for nutrient discharges (nitrogen and ammonia), as well as removing phosphorus, which is not regulated under the existing ELG. For nitrogen, the median annual average of 97 direct discharging MPP facilities was 32.8 mg/L, which is well below the 2004 ELG monthly averages of 103 mg/L for poultry and 132 mg/L for meat processors. For ammonia, the median annual average for 119 facilities was approximately 0.5 mg/L, which is far lower than the 4 mg/L required under the ELG regulations. For phosphorus, which is not regulated under the existing ELGs, the median annual average of 140 MPP facilities was less than 2 mg/L indicating that some MPP facilities are meeting water-quality based low phosphorus limits of their NPDES permits using current treatment technologies. These initial results indicated that revised ELGs may be appropriate as the industry is capable of achieving effluent limitations well below the current 2004 regulations.

2. Detailed Study of Meat and Poultry Products (USEPA. 2021. EPA-821-R-21-003)

As a result of the cross-industry review of nutrients in industrial wastewater and the further review of the MPP category, EPA began a detailed study of the MPP industry. The goals of the MPP detailed study were to gain a better understanding of the industry and evaluate whether the ELGs should be revised.

EPA began by collecting publicly available information about the MPP industry. To obtain a list of facilities that may be part of the MPP industry, EPA evaluated industry directories from the U.S. Department of Agriculture (USDA) Food Safety Inspection Service (FSIS), the U.S. Food and Drug Administration (FDA), and the National Renderers Association (NRA). To further develop this list, EPA evaluated information from POTW Annual Reports, EPA's Integrated Compliance Information System National Pollutant Discharge Elimination System (ICIS-NPDES) database, and EPA's TRI

database. EPA also engaged with EPA regions, federal agencies, States, clean water organizations, industry stakeholders, environmental groups, and communities in close proximity to MPP facilities to understand different perspectives on the industry and effects of the industry on communities and to gain insights into the industry.

EPA used the publicly available information to analyze the industry. EPA found that the MPP industry discharges the highest phosphorus levels and second highest nitrogen levels of all industrial categories. EPA found the nutrient discharges are from numerous facilities across the country and that the nutrient pollutants are at concentrations that can be reduced with current wastewater treatment technology. Further, some of the studied facilities were already removing nutrients and achieving effluent concentrations well below the limitations in the existing MPP ELGs.

During the detailed study, EPA compiled a list of over 7,000 facilities from the sources listed above that potentially processed meat and poultry products and might be part of the MPP industry. Of these, EPA estimated that approximately 300 are likely direct dischargers. During the rulemaking process, EPA refined the list to 5,055 MPP facilities, of which 171 are direct dischargers. As the existing ELGs only apply to a subset of the direct dischargers, the 2004 MPP ELGs cover approximately 150 facilities. As mentioned, the wastewater from the direct dischargers has high amounts of nutrients. Around 120 of the estimated 150 direct dischargers discharge to waters listed as impaired, with much of the MPP total nitrogen and total phosphorus load discharging to waters impaired for algal growth, ammonia, nutrients, and/or oxygen depletion.

As the majority of MPP facilities are indirect dischargers, which are not currently subject to national categorical pretreatment standards, EPA also studied POTWs that receive MPP wastewater. In reviewing permits for POTWs that receive MPP wastewater, EPA found the majority do not have limits for nitrogen or phosphorus. Thus, many POTWs may not be removing much of the nutrient load discharged by MPP industrial users because many POTWs do not have tertiary treatment designed to remove nutrients. Additionally, many of the POTWs (73%) had permit violations for pollutants found in MPP wastewater (analysis included BOD, TSS, chlorides, nitrogen, phosphorus, *E. coli*, total residual chlorine (TRC), coliforms, metals, ammonia, and oil & grease). The

collected data thus indicates MPP facilities may be causing or contributing to violations of POTW permit limits (EUSEPA. 2021. PA-HQ-OW-2021-0547-0110).

National ELGs can help ensure that all people in the vicinity of industrial direct and indirect discharges receive the same degree of protection from environmental and health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work. To assess information related to environmental justice, EPA conducted screening analyses of areas with MPP facilities and found 82% of MPP facilities that directly discharge wastewater to waters of the U.S. are within one mile of census block groups with demographic or environmental characteristics of concern. This indicates that such facilities may be disproportionately impacting communities of concern and therefore revised wastewater regulations may benefit these communities.³

3. Announcement of Rule in Preliminary Effluent Guidelines Plan 15

In 2021, in the *Preliminary Effluent Guidelines Program Plan 15* (Preliminary Plan 15), EPA announced a rulemaking to revise the existing discharge standards for the MPP industry (USEPA. 2021. EPA-821-R-21-003).

4. Litigation and Consent Decree

On December 23, 2022, Plaintiffs Cape Fear River Watch, Rural Empowerment Association for Community Help,

Waterkeepers Chesapeake, Waterkeeper Alliance, Humane Society of the United States, Food & Water Watch, Environment America, Comite Civico del Valle, Center for Biological Diversity, and Animal Legal Defense Fund filed a complaint alleging that EPA's failure to revise ELGs and to promulgate pretreatment standards for the MPP category constituted failures to act by statutory deadlines in violation of the CWA and Administrative Procedures Act ("APA") (*Cape Fear River Watch et al. v. United States Environmental Protection Agency*, No. 1:22-cv-03809 (D. D.C)).

Although EPA was in the process of conducting the MPP rulemaking, EPA had not publicly announced any specific timeline for completion. The parties initiated settlement discussions, resulting in a proposed consent decree with deadlines for completion of the rulemaking, which EPA entered into after public notice and comment (88 FR 12930 (Mar. 1, 2023)). Under the consent decree, EPA has obligations to sign a notice of proposed rulemaking by December 13, 2023 and to sign a decision taking final action on the proposal by August 31, 2025 (Consent Decree, *Cape Fear River Watch et al. v. EPA*, Case No. 1:22-cv-03809-BAH (05/03/23)).

V. Meat and Poultry Products Industry Description

A. General Description of Industry

The MPP point source category includes facilities "engaged in the slaughtering, dressing and packing of meat and poultry products for human

consumption and/or animal food and feeds. Meat and poultry products for human consumption include meat and poultry from cattle, hogs, sheep, chickens, turkeys, ducks and other fowl as well as sausages, luncheon meats and cured, smoked or canned or other prepared meat and poultry products from purchased carcasses and other materials. Meat and poultry products for animal food and feeds include animal oils, meat meal and facilities that render grease and tallow from animal fat, bones and meat scraps" (40 CFR 432.1).

Based on industry responses to the 2022 MPP Questionnaire, EPA estimates there are 5,055 MPP facilities currently in operation. Table V-1 shows the estimated number of MPP facilities based on facility process based on the 2022 MPP Questionnaire and other publicly available data sources. "Meat First" refers to facilities that slaughter animals excluding poultry. "Meat Further" refers to facilities that further process animal products excluding poultry. "Poultry First" refers to facilities that slaughter poultry. "Poultry Further" refers to facilities that further process poultry. Facilities that process meat and poultry were classified by the type which they process the most. "Render" refers to facilities that only process meat and poultry offcuts, trimmings, bones, dead animals, scrap materials, and other related usable by-products. For more information on how facilities were classified, see the *Meat and Poultry Products (MPP) Profile Methodology Memorandum* (USEPA. 2023. DCN MP00306).

TABLE V-1—NUMBER OF FACILITIES IN MPP INDUSTRY BY PROCESS AND DISCHARGE TYPE

Process	Number of facilities			
	Direct dischargers	Indirect dischargers	Zero dischargers	Total
Meat First	47	509	270	826
Meat Further	29	2,741	690	3,460
Poultry First	70	168	52	290
Poultry Further	6	169	119	294
Render	19	121	45	185
Total	171	3,708	1,176	5,055

Source: DCNMP00306.

As shown in Table V-1, there are a large number of MPP facilities in each sector. These facilities are located across the country. Although first processors/ slaughterhouses tend to be larger, there is a large range in production volumes across the industry. Based on the

questionnaire, 171 facilities have NPDES permits and discharge wastewater directly to waters of the U.S. An additional 3,708 facilities discharge wastewater to POTWs, and 1,176 facilities do not discharge process wastewater. MPP effluent discharges

contain pollutants including nitrogen, phosphorus, ammonia, oil & grease, BOD, and chlorides.

B. Control and Treatment Technologies

EPA evaluated technologies available to control and treat wastewater

³ Characteristics of concern in this analysis are defined as demographic or environmental indexes

above the 80th percentile in a state based on data available in the 2020 release of EJSCEEN. Census

block groups with one or more indexes above this threshold were considered communities of concern.

generated by the MPP industry. EPA has not identified any practical difference in types of treatment technologies between meat products and poultry products facilities. Some MPP processes result in wastewater streams with higher concentrations of pollutants, but facilities across the industry generally contain the same pollutants, including nitrogen, phosphorus, oil & grease, BOD, TSS, and chlorides.

The pollutants in MPP wastewaters are similar to those in domestic wastewater. POTWs often have similar wastewater treatment technologies as direct discharging MPP facilities. However, some indirect MPP wastewater discharges have pollutant loads that the receiving POTW cannot handle. These indirect discharges may cause passthrough or interference as those terms are defined in EPA's general pretreatment regulations at 40 CFR 403.3(k) and (p). Also, many POTWs are not equipped to effectively treat all pollutants found in MPP wastewater such as nitrogen, phosphorus, and chlorides. Thus, indirect discharging MPP facilities may need to treat their wastewater before sending it to their POTW in order to meet any local limits established by the control authority under EPA's general pretreatment regulations (40 CFR part 403).

EPA evaluated available technologies that can be used to treat or remove MPP pollutants, individually and in treatment trains. This section is split into subsections based on type of pollutant removal, including conventional pollutants, phosphorus, nitrogen, pathogens, and chlorides. As the evaluated technologies result in sludge production, technologies for solids handling are also included. Discussions on treatment trains are included within applicable sections.

1. Conventional Pollutant Removal

MPP process wastewater contains oil & grease, TSS, and BOD, which are all conventional pollutants. These pollutants can be removed with primary treatment, which removes floating and settleable solids. Typical treatment technologies include screens and DAF.

a. Screening: Screens are generally the first treatment unit in a wastewater treatment train. Screens are inexpensive and remove large solid particles from the wastewater that may otherwise damage or interfere with downstream equipment and treatment processes. At some facilities, the materials removed by the screens may be used as raw material at rendering facilities.

b. Dissolved air flotation (DAF): DAF is used extensively in the primary treatment of MPP wastewaters to

remove suspended solids and oil & grease. In a DAF unit, air is dissolved into the wastewater, forming small bubbles. As the air bubbles float to the surface, solids attach to the air bubbles, and rise to the top of the unit forming a layer of floating pollutants. A skimmer is used to continuously remove this layer of floating solids, while a bottom sludge collector removes any solids that settle to the bottom. In some facilities, such as renderers, the removed solids can be recycled to the facility as raw materials.

c. Chemical Addition: Polymers, flocculants, and phosphorus precipitating chemicals may be added to, or prior to, the DAF. The chemical addition increases the removal of pollutants from the wastewater. Adding chemicals to remove phosphorus can help facilities meet phosphorus effluent limits. For facilities that recycle materials from the DAF to the facility, chemicals addition may not be possible as this would contaminate the raw material.

2. Biological/Organic Pollutant Removal

BOD, nitrogen, and phosphorus are removed through biological, physical, and chemical processes. Biological processes can be used to achieve low levels of BOD and nitrogen and are commonly used at MPP facilities. Microorganisms used in biological wastewater treatment require phosphorus for cell synthesis and energy transport and typically remove 10 to 30 percent of influent phosphorus. Through biological treatment, organic compounds are broken down with bacteria into products including water, CO₂, N₂, and CH₄.

a. Anaerobic biological treatment: In anaerobic wastewater treatment, facultative and anaerobic microorganisms reduce organic matter and BOD into gaseous methane and carbon dioxide. The gases may be released into the atmosphere, captured and flared, or used as biogas. Anaerobic treatment systems have negligible energy requirements and can treat high-strength wastewaters. Anaerobic lagoons are a typical anaerobic system used at MPP facilities. Due to the detention time, these lagoons also equalize wastewater flow. The lagoons are not mixed to maintain anaerobic conditions. Anaerobic lagoons can reduce BOD by 95 percent and suspended solids by 95

percent (Johns. 1995;⁴ USEPA. 1974;⁵ USEPA. 1975).⁶

b. Aerobic biological treatment: In aerobic wastewater treatment, microorganisms require oxygen to degrade organic material into water, carbon dioxide, and organic compounds. Aerobic degradation is faster than anaerobic degradation. Soluble BOD reductions up to 95 percent are possible. Aerated lagoons have fixed, floating, or diffused air systems to aerate the water. Aerobic lagoons (naturally aerated systems) use algae to aerate the system through photosynthesis.

c. Anoxic biological treatment: Anoxic wastewater treatment systems are oxygen deficient, and bacteria break down nitrogenous compounds into oxygen and nitrogen gas.

d. Activated sludge: This system includes an aeration tank followed by a settling tank. Settled solids from the second tank are recycled back into the aeration tank. Under optimal conditions, this process can achieve 95 percent reductions in BOD, suspended solids, and reductions in ammonia nitrogen (Johns. 1995; USEPA. 1974; USEPA. 1975).

e. Sequencing batch reactor (SBR): An SBR completes the activated sludge process in a single reactor. The system first fills with wastewater, then the reaction in which bacteria break down organic compounds in the presence of oxygen occurs for some time, then the system is given time to settle and separate the microorganisms from the treated effluent, and then the tank is discharged. SBR systems provide high removal rates of BOD and suspended solids, can be designed for nitrification, and can remove nitrogen and phosphorus. SBRs are ideal for low flow processes as they do not need to run continuously, and the systems allow for operational and loading flexibility (Glenn et al. 1990).⁷

f. Multistage biological treatment for nitrogen removal: Nitrogen removal is a

⁴ Johns, M.R. 1995. *Developments in wastewater treatment in the meat processing industry: A review*. Bioresource Technology 54. EPA-HQ-OW-2002-0014-2410. DCN 300232.

⁵ USEPA (U.S. Environmental Protection Agency). 1974, February. *Development Document for Effluent Limitation Guidelines and New Source Performance Standards for the Red Meat Processing Segment of the Meat Product and Rendering Processing Point Source Category*. Washington, DC. DCN MP00348.

⁶ USEPA (U.S. Environmental Protection Agency). 1975, April. *Development Document for Effluent Limitation Guidelines and New Source Performance Standards for the Poultry Segment of the Meat Product and Rendering Processing Point Source Category*. Washington, DC. DCN MP00349.

⁷ Glenn, S.L., R.T., Norris, Jr., and J.T. Sommerfield. 1990. *Discrete-event simulation in wastewater treatment*. Journal of Environmental Science and Health, 25 (4).

two-step process: nitrification and denitrification.

i. Nitrification is a two-step aerobic process. First, ammonia is oxidized into nitrite by Nitrosomonas bacteria. Then, nitrite is oxidized into nitrate by Nitrobacter bacteria (Metcalf & Eddy, Inc. 1991).⁸

ii. Denitrification: Nitrite and nitrate are reduced by heterotrophic bacteria into nitrogen gas in anaerobic conditions. A carbon source, such as methanol, may need to be added to keep the microbes healthy.

Biological treatment systems are often used in series to achieve high rates of nitrogen removal. Wastewater flows from one system to the next, with recycle streams and returned activated sludge returning to various locations of the system. Some examples include:

i. Modified Ludzack-Ettinger (MLE): The MLE is a two-stage system in which an anoxic stage is followed by an aerobic stage, before wastewater goes to a clarifier. Mixed liquor with high levels of nitrate is recycled from the aerobic stage back to the influent. Activated sludge from the clarifier is also recycled back to the influent. The MLE process removes most of the BOD and can achieve a nitrogen removal of 80 percent.

ii. Bardenpho: This is a four-stage process: anoxic, aerobic, anoxic, aerobic, followed by a secondary clarifier. Mixed liquor with high levels of nitrate is recycled from the first aerobic stage back to the first anoxic stage. Activated sludge from the clarifier is recycled back to the influent. Nitrification occurs primarily in the second stage (aerobic). Denitrification occurs in the first and third stages (anoxic). The final aeration stage removes nitrogen gas from the system and increases the concentration of dissolved oxygen. The four-stage Bardenpho process achieves higher rates of nitrogen removal compared to the two-stage MLE process.

iii. Modified Bardenpho: This is a five-stage process: anaerobic, anoxic, aerobic, anoxic, aerobic, followed by a secondary clarifier. As in the Bardenpho process, mixed liquor with high levels of nitrate is recycled from the first aerobic stage back to the first anoxic stage and activated sludge from the clarifier is recycled back to the influent. The anaerobic stage at the beginning of the system results in biological phosphorus removal. Phosphate-accumulating organisms (PAOs) are recycled from the aerobic stage in the

mixed liquor to the anaerobic stage. In the following aerobic stages, PAOs uptake large amounts of phosphorus (USEPA. 2021. EPA 830-R-01-001).

iv. Other: There are many other processes that use multiple stages of treatment to remove nitrogen. These include A2/O, step feed, University of Capetown (UCT) processes, oxidation ditches, and the Schreiber process, amongst others (USEPA. 2004. EPA-821-R-04-011).

g. Membrane bioreactor (MBR): MBRs use membranes to separate liquids and solids. The liquid stream then passes through anoxic and aerobic zones, in similar processes to the biological treatment systems described above. As the membranes greatly reduce the suspended solids in the liquid stream, MBR removes nitrogen and phosphorus (USEPA. 2009. EPA/600/R-09/012).

h. Enhanced Biological Phosphorus Removal: Microorganisms used in biological wastewater treatment require phosphorus for cell synthesis and energy transport. In the treatment of typical domestic wastewater, between 10 and 30 percent of influent phosphorus is removed by microbial assimilation, followed by clarification or filtration. However, phosphorus assimilation in excess of requirements for cell maintenance and growth, known as luxury uptake, can be induced by a sequence of anaerobic and aerobic conditions (Metcalf & Eddy, Inc. 1991). As explained above, the modified Bardenpho process removes phosphorus biologically.

3. Phosphorus Removal

As mentioned in the biological/organic pollutant removal section, some phosphorus is removed in biological treatment processes. To achieve low levels of phosphorus, chemical addition and/or tertiary filters can be used.

a. Chemical addition: Phosphorus can be removed from wastewater by precipitation using metal salts [ferric chloride, aluminum sulfate (alum)] or lime. Polymers may also be added to increase the removal efficiency. The chemicals may be added prior to or in the DAF, in primary clarifier effluent, in biological treatment processes prior to secondary clarification, or after secondary clarification. The precipitated phosphorus is removed with other biosolids (Metcalf & Eddy, Inc. 1991).

b. Tertiary Filters: Filters following chemical phosphorus removal can be used to achieve high removal rates of phosphorus. Tertiary filtration may include sand filters, ion-exchange, membranes, and others.

4. Pathogen Removal

Disinfection destroys remaining pathogenic microorganisms and is generally required for all MPP wastewaters being discharged to surface waters. Chlorination/dechlorination, Ultra-Violet (UV), and some filters can be used to meet effluent limits for pathogens and to inactivate pathogenic microorganisms prior to discharge to surface waters.

a. Chlorination/dechlorination: Chlorine disinfects wastewater through oxidation reactions with cellular material which results in the destruction of pathogens. Mixing and contact time in a chlorine contact chamber are critical factors to ensure proper disinfection. The chlorine compounds commonly used for wastewater disinfection are chlorine gas, calcium hypochlorite, sodium hypochlorite, and chlorine dioxide (Metcalf & Eddy, Inc. 1991). Chlorine residuals are toxic to aquatic life, so dechlorination is often necessary. Sulfur dioxide can be added, as it reacts with both free chlorine and chloramines with chloride ions, lowering chlorine residuals (USEPA, 1999. EPA 832-F-99-062).

b. Ultra-Violet (UV): Radiation emitted from UV light is an effective bactericide and virucide and does not generate any toxic compounds. Wavelengths between 250 and 270 nm inactivates cells (USEPA, 1999. EPA 832-F-99-064). UV lamps can be submerged in the wastewater or suspended outside the wastewater.

c. Tertiary Filtration: Filters and membranes with pore sizes smaller than pathogens can be used to remove pathogens from wastewater. Ultrafiltration, membranes, and reverse osmosis are options.

5. Chlorides Removal

Some MPP processes, including hides processing, meat and poultry koshering, and further processing techniques, such as curing, brining, and pickling, commonly produce wastewater streams with high levels of chlorides. Some facilities engage in water softening, which can also produce high chlorides wastestreams. Wastewater treatment technologies commonly found at POTWs and many MPP facilities do not remove chlorides. The optimal chlorides treatment technologies for a facility depends on wastewater strength, climate, land availability, and cost. High chloride wastestreams may be able to be separated from other wastestreams, which can reduce costs and energy required for treatment.

a. Hauling: Facilities may choose to haul high chloride wastewater (also

⁸ Metcalf & Eddy, Inc. 1991. *Wastewater Engineering: Treatment, Disposal, and Reuse*. 3rd Edition, McGraw-Hill, Inc. DCN MP00334.

called brine) offsite in tanker trucks. The wastewater may be taken to a renderer where it may be used for production purposes, transported to a facility equipped to treat and/or dispose of brine, or taken offsite for deep-well injection or other means of disposal. Hauling can be costly as compared to other options, especially for large amounts of wastewater.

b. Evaporation ponds: Brine wastewater may be disposed into shallow ponds exposed to the sun. The water evaporates, leaving salt. The salt will need to be emptied from the ponds occasionally to allow the ponds to be reused. This technology relies on solar evaporation and is best in dry/semi-dry climates. Land space for the ponds is also necessary. Due to the potential for groundwater pollution, the ponds should be lined (Panagopoulos et al. 2019).⁹

c. Evaporation systems/Crystallizers: Brine water is concentrated to near saturation, which results in salt crystallization. Heat is used to evaporate the water. The systems are often costly as compared to other options and corrosion is common if proper materials of construction are not utilized (Zhang et al. 2021).¹⁰

d. Deep-well injection: Fluids such as brine/salt water can be injected underground into porous geological formations. The well is normally 500 to 1500 meters deep. Constructing a well can be costly, and deep-well injection is not allowed in some parts of the U.S. (Panagopoulos et al. 2019).

6. Solids Handling

Some wastewater treatment technologies produce industrial sludge. In the MPP industry, sludge is primarily generated by the DAF and clarifiers. The sludge contains oil & grease, organic materials, nitrogen, phosphorus, and chemicals/polymers added in the treatment system. The sludge may have a high-water content, which can be reduced, to reduce volume and save hauling and landfilling costs. Common dewatering technologies include gravity thickening units and the belt filter press. The sludge may be incinerated, land applied, or landfilled, depending on State, local and federal regulations and disposal method availability.

⁹ Panagopoulos, A., Haralambous, K.J., and Loizidou, M. 2019. *Desalination brine disposal methods and treatment technologies—A review*. Science of The Total Environment, 693. <https://doi.org/10.1016/j.scitotenv.2019.07.351>.

¹⁰ Zhang, C., Shi, Y., Shi, L., Li, H., Li, R., Hong, S., Zhuo, S., Zhang, T., Wang, P. 2021. *Designing a next generation solar crystallizer for real seawater brine treatment with zero liquid discharge*. Nature Communications, 12. <https://www.nature.com/articles/s41467-021-21124-4>.

VI. Data Collection

A. Information From the Meat and Poultry Products Industry

The Agency evaluated the following databases online to locate data and information to support regulatory development: The Agency's ICIS-NPDES database, USDA's Food Safety and Inspection Service's Hazard Analysis and Critical Control Point (HACCP) Databases, the 2020 U.S. Census of Manufactures, Dun & Bradstreet (D&B) Hoover's database, and Experian's Business TargetIQ database. In addition, the Agency conducted a thorough collection and review of secondary sources, which include data, reports, and analyses published by government agencies; reports and analyses published by the MPP industry and its associated organizations; and publicly available financial information compiled by both government and private organizations.

EPA met with or consulted the following organizations for industry information including facility names, addresses and contact information: National Cattlemen's Beef Association, National Pork Producers Council, North American Meat Institute, the North American Renderers Association, and the U.S. Poultry & Egg Association.

The documents cited above were all used by EPA in developing the industry profile, a survey sampling frame, and for stratifying the survey sampling frame. In addition to these publications, EPA examined many other documents that provided useful overviews and analysis of the MPP industry. EPA also conducted general internet searches by company name.

1. Survey

Publicly available data on MPP facilities are limited. EPA has based the population of MPP facilities on data largely from the USDA FSIS. The FSIS dataset compiles information on facility name and location, type(s) of meat and poultry processed, and limited details on size (both employees and amount processed). USDA FSIS does not report details specific to wastewater generation or wastewater treatment. EPA also included a list of renderers from the NRA, and MPP facilities in the ICIS-NPDES dataset, in developing the list of MPP facilities. These data are limited since the NPDES data generally includes only those facilities directly discharging wastewater, although some individual States require pretreatment permits to also be reported.

In order to supplement publicly available data sources, EPA conducted a survey of the MPP industry. EPA

developed two questionnaires to collect site-specific technical and economic information to provide a more robust record to support developing regulatory options and conduct analyses required by statutes and executive orders. EPA's Office of Water administered a Census Questionnaire and a Detailed Questionnaire to facilities engaging in meat and poultry processing, including those currently regulated under 40 CFR part 432, and facilities that discharge wastewater directly to waters of the U.S., indirectly to POTWs, or do not discharge wastewater. The Census Questionnaire was administered as a census of the industry to confirm the industry population, as well as general information on the industry, including:

- Processing details (including type of meat or poultry and type of processing),
- Type and size (both production and employees) of the facility, and
- Wastewater generation and treatment information.

EPA used information collected through the Census Questionnaire to confirm the list of facilities that fall within the MPP industry and to identify which MPP facilities generate, treat, and/or discharge wastewater. A statistically representative subset of different types of MPP facilities were asked to complete a more detailed set of questions. This Detailed Questionnaire collected the same information as the Census Questionnaire and additional details on processing operations, types and amount of wastewater generated by operation, wastewater treatment details, and economic data. In addition, EPA collected and analyzed wastewater samples from six MPP facilities that received the Detailed Questionnaire to characterize raw waste streams, wastewater treatment systems, and treated effluent for pollutants of interest.

At the outset of EPA's development of the questionnaires, based on data primarily from USDA FSIS and ICIS-NPDES, EPA estimated the MPP industry had between 7,000 and 8,000 facilities. Because no one data source collects information from all MPP facilities, the exact number was unclear at the time the questionnaires were developed. EPA refined the list of facilities by identifying additional or duplicate facilities and working with trade associations to identify facilities that do not process meat or poultry. EPA conducted a statistical sample of facilities on the list and sent 1,565 unique facilities the Detailed Questionnaire and the other facilities were sent the Census Questionnaire. EPA stratified the list of facilities (*i.e.*, the sampling frame) into groups based

on the stage of operation (*i.e.*, slaughter, further processor, renderer), the meat type (*i.e.*, meat, poultry), and production, to increase sample precision. Each facility fell within one or more strata. EPA estimated the number of facilities to sample from each stratum based on acceptable error, confidence level, and expected response rate using Cochran's sample size formula. The target sample size was 1,633 and these 1,565 represent the 1,633 facility-strata combination as some facilities fell in multiple strata and represent multiple strata. The Detailed Questionnaire included all questions in the Census Questionnaire. Both questionnaires were issued at the same time and requested data for 2021. Data from 2021 represents the most recent year for which complete technical and economic data were available as EPA administered the survey in 2022. The Detailed Questionnaire also asked for some data from 2017 and 2019 to evaluate recent trends in industry operation and economics. EPA administered the data collection under the authority of section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318 and in accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521.¹¹ The questionnaires can be found in Docket ID Number EPA–HQ–OW–2021–0736. Additional details on the questionnaire methodology can be found in the TDD.

2. Stakeholder Meetings and Outreach

EPA encouraged the participation of all interested parties throughout the development of the MPP rule. The Agency conducted outreach to trade associations that represent the vast majority of the facilities that will be affected by the rule. EPA met with various stakeholders to discuss aspects of the regulation development. EPA also participated in industry meetings and gave presentations on the status of the regulation development. A comprehensive list and description of these meetings can be found in the TDD. EPA also met with environmental groups and Tribal communities and conducted environmental justice outreach. For details on these meetings, see the *Environmental Assessment for the Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category* (U.S. EPA, 2023. EPA 821–R–23–012).

B. Economic Data

EPA analyzed the economic impact of the proposed regulation on both discharging facilities and the firms that own them. These analyses form the basis of EPA's proposed determination that the regulation is economically achievable. EPA also analyzed larger market wide impacts on production levels, prices, and employment. EPA relied on existing sources of economic data for these analyses and to supplement facility and firm information obtained from the industry survey.

1. Facility and Firm-Level Economic Data

When questionnaire responses were available for a facility and its owner, that information was used for the impact analyses, such as the closure screening analyses that are described in detail in section VIII. When information from the questionnaire was not available, however, EPA relied on two primary sources of external data. The first data source was the USDA FSIS facility-level information. This information was used to supplement facility production and employment estimates. The second data source was D&B Hoovers database of business information. This source was used to supplement revenue, employment, and ownership information at both the firm and facility level.

2. Industry and Sector-Level Economic Data

After estimating facility and firm level costs, EPA analyzed the potential effect on market prices for major industry commodities such as, beef, pork, broiler chickens, and turkeys. EPA also analyzed the potential for changes to national and regional production-levels for these commodities. EPA estimated changes to both short-term and long-term employment levels. Finally, EPA also estimated potential changes to the barriers-to-entry for this industry as well as industry consolidation trends.

The primary data source for the sector and industry-level analyses is USDA's Economic Research Service (ERS). The ERS analyzes trends and emerging issues in the agricultural sector and regularly publish data on farm sector performance and farm households' well-being; farm size and concentration; market analysis, data, and projections on commodity supply, demand, and prices; and Federal farm policies. EPA also used results from agricultural market studies published in peer reviewed journals.

C. Other Data Sources

EPA conducted several data collection activities in support of developing the proposed rule. EPA used these data to develop an industry profile, evaluate industry subcategorization, determine wastewater characteristics and potential pollution control technologies, review potential pollutant load reductions and costs associated with certain technology options, review environmental impacts associated with discharges from this industry, and develop pollutant limitations.

1. Site Visits

During 2022, EPA conducted site visits at nine different MPP facilities, specifically three meat facilities, five poultry facilities, and one independent rendering facility. In selecting candidates for site visits, EPA attempted to identify facilities with advanced wastewater treatment technologies across the different types of operations performed in the industry. During each visit, EPA collected information on facility process operations including recent changes and upgrades, wastewater treatment operations, water usage, and waste management operations. See the TDD for additional details on site visits.

2. Wastewater Sampling

Between August and November 2022, EPA conducted a sampling program at six MPP facilities located throughout the United States to collect wastewater characterization data and treatment performance data.

EPA selected facilities based on nitrogen and phosphorus discharge data reported in DMRs and wastewater treatment information obtained from permits, permit application data, and site visits. EPA selected three meat facilities, two poultry facilities, and one independent rendering facility with low discharges of nutrients and/or phosphorus. All selected facilities were direct discharge facilities.

During each sampling episode, EPA collected wastewater samples for five consecutive days. Sampling points varied by facility and wastewater treatment system, but in general, EPA collected the following samples at all selected facilities:

- Treatment system influent (untreated wastewater). Sample collected downstream of screening (if present) to ensure large solids were removed to facilitate sampling.
- Effluent from primary treatment (or influent to biological treatment). Primary treatment typically included a DAF unit or anaerobic basin/lagoon.

¹¹ EPA ICR No. 2701.01, OMB Control No. 2040–NEW.

- Effluent from biological treatment (or influent to tertiary treatment). Biological treatment typically included complete nitrification/denitrification.

- Effluent from tertiary treatment (e.g., filters, disinfection, and/or chlorination/dechlorination), if tertiary treatment was in place.

- Final effluent from the treatment system, if different than effluent from last level of treatment (e.g., re-aeration basin).

EPA also collected operations data during the sampling episode to allow for an engineering assessment of the design, operation, and performance of treatment systems at MPP facilities. Specifically, EPA collected system design information, as well as daily operations data (e.g., production, wastewater flow, chemical additions, sludge generation). See the TDD and facility-specific sampling episode reports (USEPA. 2023. DCN MP00326, DCN MP00333, DCN MP00332, DCN MP00317, DCN MP00315, DCN MP00311) for details on the sampling points selected for each facility and the operational data collected.

Based on conversations with industry, most MPP facilities use drinking water sources (public water supplies or well water) for all source water. Furthermore, facilities may treat their source water with sodium hypochlorite (NaOCl) or water softeners before use as the facilities are generating food-grade products (USEPA. 2022. DCN MP00123, DCN MP00276, DCN MP00138, DCN MP00142). For these reasons and because EPA does not expect drinking water to contain nutrients or other pollutants at levels found in MPP wastewater, EPA did not collect source water samples.

EPA identified pollutants of interest in MPP wastewater based on data from the previous MPP rulemaking (USEPA, 2004) and literature searches. Below is a list of pollutant or pollutant groups chosen by EPA for the MPP sampling program.

- Biochemical oxygen demand (BOD) and carbonaceous biochemical oxygen demand (CBOD)
- Chemical Oxygen Demand (COD)
- Inorganic anions
- Oil & grease
- Nitrogen compounds
- Total and ortho-phosphorus
- TSS and TDS
- Total organic carbon (TOC)
- Bacteria (fecal coliform, *Escherichia coli* (*E. coli*)) and enterococci)
- Metals

See the *Pollutants of Concern (POC) Analysis for the Meat and Poultry Products (MPP) Proposed Rule* (USEPA.

2023. DCN MP00190), which presents a table of the pollutants by analytical method and corresponding baseline values. See the *Generic Sampling and Analysis Plan (GSAP)* (USEPA. 2023. DCN MP00136) and the facility-specific sampling and analysis plans (SAPs) (USEPA. 2023. DCN MP00149, DCN MP00137, DCN MP00150, DCN MP00151, DCN MP00152, DCN MP00153) for more information on sampling procedures. EPA has included in the MPP Rulemaking Record all information collected for which each facility has not asserted a claim of CBI or which would indirectly reveal information claimed to be CBI.

VII. Proposed Regulation

A. Description of the Options

As previously described, EPA's 2019 cross-cutting review of nutrient discharges from 59 industrial categories found that the MPP point source category discharged some of the highest nitrogen and phosphorus levels of all industries. OW initiated a detailed study in 2020 and announced a rulemaking to revise the ELGs in EPA's Preliminary Plan 15 based on information suggesting facilities can do more to control nutrients and other pollutants and that revisions could reduce discharges affecting underserved and overburdened communities (USEPA. 2021. EPA-821-R-21-003). EPA identified technologies currently in use by MPP facilities that can further reduce nitrogen discharges below the levels that are found in the existing ELGs, which were last revised in 2004. In addition, MPP facilities are currently using technologies to remove phosphorus, which is not regulated under the existing MPP ELGs. This proposal evaluates three regulatory options as shown in Table VII-2 of this preamble. While developing these regulatory options, EPA's goal was to reduce pollutant discharges to surface waters, reduce and/or eliminate interference and passthrough at POTWs receiving MPP wastewater, and establish effluent limits and pretreatment standards based on technologies that are available and economically achievable for the industry, while minimizing impacts to small business.

EPA considered and continues to consider ways to minimize impacts to small business when developing the regulatory options consistent with the statutory factors. As described in Section V, EPA identified 5,055 MPP facilities generating process wastewater, and 3,879 of these facilities discharge to waters of the U.S. directly or indirectly.

EPA carefully considered impacts of new or revised effluent limitations and pretreatment standards on small business by using facility production thresholds to distinguish smaller facilities with lower revenues from larger facilities. In developing the options, EPA evaluated differing thresholds for applicability of the proposed rule provisions to evaluate how impacts to small business would vary as more and smaller facilities would be subject to new and/or more stringent effluent limitations and pretreatment standards. The record supports that the impacts to small business from the preferred option (Option 1) would not be significant (see Section XVI.C). Under Option 1, most MPP facilities (79 percent) fall below the proposed production thresholds, and therefore, would have no new limitations. The proposed new limitations under Option 1 would impact 844 facilities, representing 21 percent of the total number of MPP facilities discharging to waters of the U.S. and to POTWs.

Under the most expansive option proposed (Option 3), new limitations would impact 1,618 facilities of the 3,879, or 42 percent of facilities discharging to waters of the U.S. and to POTWs. EPA also considered minimizing impacts to small businesses by basing effluent limitations on lower cost wastewater treatment technologies for facilities with lower production. For example, in Option 3, indirect discharging facilities producing below 5 million pounds per year would have no new requirements and indirect discharging facilities producing between 5 and 30 million pounds per year would have effluent limitations based on lower cost pretreatment technologies consisting of screening and DAF to control conventional pollutants only. Facilities producing 30 million pounds per year or greater would have additional requirements that include both conventional pollutant removal and nitrogen and phosphorus removal, and this would impact only 21 percent of indirect discharging facilities.

Table VII-1 shows the total number of MPP facilities that have discharges followed by the number of facilities that EPA estimates would incur costs to comply with the requirements of the various regulatory options. All options build on the existing MPP ELGs and are based on three technologies: conventional pollutant (e.g., BOD, TSS, Oil & Grease) removal by screening and DAF, phosphorus removal by chemical precipitation, and nitrogen removal by biological treatment to achieve full denitrification. Each option

incrementally increases the subcategories and/or number of facilities to which the effluent

limitations and pretreatment standards would apply. Nitrogen and phosphorus are two primary pollutants to be

reduced with these regulatory options and the processes involved in removal are briefly described next.

TABLE VII-1—NUMBER OF MPP FACILITIES—TOTAL DISCHARGING FACILITIES AND NUMBER THAT WOULD INCUR COSTS UNDER THE REQUIREMENTS OF THE REGULATORY OPTIONS

Regulatory option	Discharge type	Total # dischargers	Total # facilities incurring costs under ELG
Option 1	Directs	171	126
	Indirects	3,708	719
	Total	3,879	845
Option 2	Directs	171	126
	Indirects	3,708	719
	Total	3,879	845
Option 3	Directs	171	135
	Indirects	3,708	1485
	Total	3,879	1,620

Nitrogen removal is carried out through a three-step biological process: (1) The conversion of ammonia from organic nitrogen by hydrolysis and microbial activities, called ammonification; (2) the aerobic conversion of ammonia to nitrate by reacting the ammonia with oxygen in a process called nitrification; and (3) the conversion of nitrate to nitrogen gas by reacting the nitrate with organic carbon under anoxic conditions in a process called denitrification. Phosphorus can be removed from wastewater by biological uptake by microorganisms and by chemical precipitation with a metal cation. Depending on the target concentration, a plant process might employ both technologies. Such a combined approach might be of particular benefit if the target concentration is very low and the starting concentration is high. In such a case, biological removal is used to remove the bulk of the phosphorus, and chemical polishing follows to achieve the final concentration; such an approach tends to reduce sludge formation from denitrification (USEPA, 2008, EPA 832-R-08-006).

For direct dischargers, all proposed options would establish revised effluent limitations that build upon the wastewater treatment systems that are the basis of the existing MPP ELGs. The ELGs that currently apply to these facilities are based on screens, DAF, anaerobic lagoons, biological treatment to achieve nitrification and partial denitrification, and chlorination/dechlorination. The effluent limitations for direct dischargers in today's proposal are based on more complete denitrification. Therefore, large facilities that already have denitrification

technology for nitrogen removal would likely need to add more complete denitrification and chemical phosphorus removal technologies to comply with the proposed effluent limitations for total nitrogen and phosphorus. Smaller facilities could be subject to nutrient limits under the lower production thresholds in Option 3 and would presumably need to install this technology for the first time, since these facilities are currently below the applicability threshold for the existing ELG.

Since there are no national pretreatment standards applicable to the MPP category, indirect discharging facilities are currently only subject to any local limits established by the control authority under the general pretreatment regulations at 40 CFR part 403. Wastewater treatment in place at indirect discharging facilities therefore ranges from no treatment to some treatment. Treatment ranges from basic treatment, such as screens and oil water separators, or more complex treatment such as DAF, anaerobic lagoons, biological treatment to achieve nitrification and denitrification, and phosphorus removal. To meet the proposed conventional pollutant pretreatment standards under the preferred Option 1, which is based on screens and DAF technology, existing indirect discharging facilities with no treatment in place now would likely need to install similar technologies. To meet the nitrogen and phosphorus pretreatment standards contained in Options 2 and 3, many indirect dischargers would likely need to add additional treatment such as anaerobic lagoons, biological treatment to achieve nitrification and full denitrification, and

chemical phosphorus removal technologies. However, as described later in this preamble, EPA is proposing to include "conditional limits" under Options 2 and 3 which would allow an exemption from nutrient pretreatment standards for indirect dischargers that are discharging to POTWs that have nutrient removal capabilities that result in equivalent nutrient removal.

Option 1 is EPA's preferred option and builds on the existing MPP ELGs by adding new effluent limitations for large direct and indirect dischargers. Option 1 would include new phosphorus limits for large direct dischargers based on chemical phosphorus removal technology, more stringent nitrogen limits for large direct dischargers based on full (not partial) denitrification, and new conventional pollution limits (pretreatment standards) for large indirect dischargers based on very basic wastewater treatment such as screening and DAF technologies to prevent passthrough and interference at POTWs. EPA requests comment on the concept of allowing POTWs, control authorities, or permit authorities to waive, under certain circumstances, the new conventional pollutant limits for large indirect dischargers. Although EPA is unclear how this would work in practice, it is possible that POTWs not experiencing passthrough and interference may be able to waive these pretreatment standards while continuing to prevent passthrough and interference. Additionally, POTWs that perform denitrification may want to waive BOD limits for their MPP industrial users so they can receive more carbon to support bacterial conversion of nitrates to nitrogen gas. EPA requests comment both on whether

such waivers should be allowed, and the demonstration necessary to justify such waivers.

Large refers to the existing rule production thresholds of greater than 50 million pounds per year of finished product produced for meat further processors (Subcategories F–I) and in terms of LWK for meat slaughtering (Subcategories A–D). For poultry slaughtering (Subcategory K) large also refers to existing rule production thresholds of greater than 100 million pounds per year of LWK, greater than 7 million pounds per year of finished product produced for poultry further processors (Subcategory L), and 10 million pounds per year of raw material processed for renderers (Subcategory J).

Option 2 builds on (includes all requirements in) Option 1 and would add nitrogen and phosphorus pretreatment standards for some large indirect discharging slaughterhouses and renderers. Specifically, Option 2 would add phosphorus and nitrogen limits for indirect discharging slaughterhouses producing greater than or equal to 200 million pounds per year and indirect discharging renderers producing greater than or equal to 350 million pounds per year.

Option 3 extends the requirements for both direct and indirect discharging facilities under Options 1 and 2 to smaller facilities. For direct discharging facilities, Option 3 would apply phosphorus and nitrogen limits to all subcategories producing greater than or equal to 10 million pounds per year, and additional more stringent nitrogen limits in all subcategories producing greater than or equal to 20 million pounds per year. For all indirect discharging facilities, Option 3 would require conventional pollutant limits for facilities producing greater than 5 million pounds per year, and nitrogen and phosphorus limits for facilities producing greater than 30 million pounds per year.

Additionally, all options would include stricter fecal coliform limits for direct discharging facilities, based on chlorination/dechlorination and UV disinfection (which is the same technology basis for the existing limitations for fecal coliform).

In addition to the options described above, EPA solicits comment on including three additional requirements in any final rule. First, limitations on the discharge of chlorides by establishing a zero discharge of pollutants requirement for certain high chlorides wastestreams. The technology basis for this requirement is segregation of these wastestreams from other process wastewater streams and

management via sidestream evaporation. EPA solicits comment on including this provision for all facilities (both direct and indirect) producing more than 5 million pounds per year with high chlorides processes. Second, EPA solicits comment on conditional limitations for phosphorus and nitrogen discharges from indirect dischargers under Options 2 and 3. Third, EPA solicits comment on limitations on *E. coli* for direct discharging facilities.

B. Proposed Changes to Subcategories

As described above, EPA proposes to revise ELGs for facilities in the following MPP subcategories: Simple Slaughterhouses (Subcategory A), Complex Slaughterhouses (Subcategory B), Low-Processing Packinghouses (Subcategory C), and High-Processing Packinghouses (Subcategory D). Although the proposed options may establish differing production thresholds for applicability under these subcategories, EPA proposes to leave the definitions of these subcategories unchanged because the definitions are not based on production thresholds and effluent limitations in the proposed regulatory options would apply to a subset of these subcategories as they are currently defined.

The Agency is not proposing revised ELGs for the small processor category (Subcategory E). Subcategory E is defined based on a size threshold of no more than 6,000 pounds per day (2.19M pounds per year) of any type or combination of finished product. EPA also proposes to leave applicability definitions for Subcategory E unchanged.

EPA is proposing revised limitations and new pretreatment standards for facilities in the following MPP subcategories: Meat Cutters (Subcategory F), Sausage and Luncheon Meats Processors (Subcategory G), Ham Processors (Subcategory H), and Canned Meats Processors (Subcategory I). Subcategories F–I are currently defined based on a production rate greater than 6,000 pounds per day (2.19 million pounds per year), and EPA proposes to leave the definitions for these subcategories unchanged. However, EPA proposes to apply effluent limitations to a subset of these subcategories based on production thresholds, which could change under the proposed regulatory options.

EPA is also proposing retaining the Renderer (Subcategory J) subcategory and revising the limitations and proposing new pretreatment standards for facilities in this subcategory. EPA proposes to leave the applicability definitions for Renderers (Subcategory J)

unchanged as facilities using raw material at rates greater than 10 million pounds per year. However, EPA proposes to apply effluent limitations to a subset of these subcategories based on production thresholds, which could change under the proposed regulatory options.

EPA is proposing establishing revised limitations and new pretreatment standards for facilities in the poultry subcategories. The poultry subcategories (Subcategory K, Poultry First Processing and Subcategory L, Poultry Further Processing) are not defined based on production and EPA proposes to leave the applicability definitions unchanged. However, EPA proposes to apply effluent limitations to a subset of these subcategories based on production thresholds, which could change under the proposed regulatory options.

In summary, EPA is retaining the existing subcategories and proposing revisions to applicable effluent limitations and addition of new pretreatment standards for most of these subcategories. The proposed ELGs apply to subsets of facilities in each subcategory based on production thresholds. In establishing the original ELGs for this industry and in the 2004 revisions, EPA broke the industry down into subcategories with similar characteristics. This breakdown recognized the major differences among companies within the industry, which might reflect, for example, different processes or economies of scale. Subdividing an industry into subcategories results in more tailored regulatory standards, thereby increasing regulatory predictability and diminishing the need to address variations among facilities through a variance process (*Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1053 (D.C. Cir. 1978)). EPA proposes to retain the subcategories in the rule as they reflect differences in processes and wastewater strength and composition and EPA has not identified any additional processes or changes in processes since the 2004 rulemaking that would warrant revision of the existing subcategories or consideration of any additional subcategories.

In addition to some specific requests for comment included throughout this proposal, EPA solicits comment on all aspects of this proposal, including the information, data, and assumptions EPA relied upon to develop the three regulatory options, as well as the proposed effluent limitations and pretreatment standards for existing and new facilities, and additional provisions (see Section F below) included in this proposal.

TABLE VII-2—SUMMARY OF REGULATORY OPTIONS

	Direct dischargers		Indirect dischargers	
	Technology basis	Applicable facilities	Technology basis	Applicable facilities
Option 1	Adds to existing ELG: full denitrification, chemical phosphorus removal, filter.	>50 million lbs/yr of finished product produced for meat further processors, >50 million lbs/yr LWK for meat slaughtering, >100 million lbs/yr of LWK for poultry slaughtering, >7 million lbs/yr of finished product produced for poultry further processors, >10 million lbs/yr of raw material processed for renderers.	Conventional pollution limits based on screening/grit removal, DAF, and dewatering/solids handling.	>50 million lbs/yr of finished product produced for meat further processors, >50 million lbs/yr LWK for meat slaughtering, >100 million lbs/yr of LWK for poultry slaughtering, >7 million lbs/yr of finished product produced for poultry further processors, >10 million lbs/yr of raw material processed for renderers.
Option 2	Same technology as Option 1	Same facilities as Option 1 ...	Same technologies as Option 1 plus anaerobic lagoon (BOD pretreatment), activated sludge (nitrification and full denitrification), chemical P removal, filter.	Option 1 facilities plus slaughterhouses producing ≥200 million lbs/yr and renderers processing ≥350 million lbs/yr raw material.
Option 3	Same technology as Option 1	Phosphorus and nitrogen limits for all direct discharging facilities producing ≥ 10 million lbs/yr, and more stringent nitrogen limits to all facilities producing ≥20 million lbs/yr.	Same technology as Option 2	Conventional limits for facilities producing >5 million lbs/yr plus nitrogen and phosphorus limits for all facilities >30 million lbs/yr.

C. Rationale for the Preferred Option (Option 1)

Considering the statutory criteria and factors described in Section IV above, EPA proposes to revise the ELGs based on BPT, BCT, BAT, PSES, PSNS, and BADCT (for NSPS) based on the technologies described in its preferred Option 1. EPA also solicits comment on the other proposed options (Options 2 and 3), and any other permutation of these options, although they are not the preferred option in this proposed rule for the reasons discussed in section VII. E below.

As described in section IV, the CWA defines two increasingly stringent levels of control to be used for developing limits for classes of pollutants and specifies factors that need to be considered. BPT is the first level of control and applies to all pollutants (*Southwestern Electric Power Co. v. EPA*, 920 F.3d 999, 1006 (5th Cir. 2019)). BPT limits are set based on the facilities representing “the average of the best” wastewater treatment in use by the industry. Statutory factors include consideration of total cost in relation to benefits; costs cannot be “wholly disproportionate” to benefits (*Chem. Mfrs. Assn. v. EPA*, 870 F.2d 177, 205 (5th Cir. 1989)).

BAT represents the second level of control for toxic and non-conventional pollutants such as nitrogen and phosphorus. In setting BAT, EPA uses not the “average” plant, but rather the

“single best performing plant” in the industry (*Chem. Mfrs. Assn. v. EPA*, 870 F.2d at 226 (5th Cir. 1989)). Unlike BPT, the BAT factors omit a cost-benefit analysis, and replace it with a requirement to consider only the “cost of achieving such effluent reduction” (*Southwestern Elec. Power Co. v. EPA*, 920 F.3d at 1006 (5th Cir. 2019)). The CWA requires that BAT be “economically achievable,” which has been interpreted to mean that the costs of controls can be “reasonably borne” by the industry (*Chem. Mfrs. Ass’n*, 870 F.2d at 262 (5th Cir. 1989); *BP Exploration & Oil*, 66 F.3d 784, 799–800 (6th Cir. 1996)). BCT represents the second level of control for conventional pollutants such as oil & grease, BOD, TSS, fecal coliform, and pH. Statutory factors for BCT include a cost-reasonableness test.

Under the preferred Option 1, for direct dischargers, EPA proposes to revise BPT/BAT for nitrogen and phosphorus and BPT/BCT for fecal coliform. For indirect dischargers, EPA proposes to establish PSES and PSNS based on BPT/BCT for TSS, BOD, and oil & grease.

1. Direct Discharging Facilities (BAT)

For direct dischargers, EPA proposes BAT effluent limitations for nitrogen based on biological treatment to achieve full denitrification and BAT effluent limitations for phosphorus based on biological treatment with chemical

precipitation with filtration. After considering the factors specified in CWA section 304(b)(2)(B) (33 U.S.C. 1314(b)(2)(B)), EPA proposes to find that this technology is technologically available, economically achievable, and has acceptable non-water quality environmental impacts.

(a) Availability of Nitrogen and Phosphorus Removal Technologies

“In setting BAT, EPA uses not the average plant, but the optimally operating plant, the pilot plant which acts as a beacon to show what is possible” (*Kennecott v. EPA*, 780 F.2d 445, 448 (4th Cir. 1985), citing *A Legislative History of the Water Pollution Control Act Amendments of 1972*, 93d Cong., 1st Sess. (Comm. Print 1973), at 798)). BAT is supposed to reflect the highest performance in the industry and may reflect a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category, bench scale or pilot plant studies, or foreign plants (*Southwestern Elec. Power Co. v. EPA*, 920 F.3d at 1006; *Am. Paper Inst. v. Train*, 543 F.2d 328, 353 (D.C. Cir. 1976); *Am. Frozen Food Inst. v. Train*, 539 F.2d 107, 132 (D.C. Cir. 1976)). BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice (*Am. Frozen Foods*, 539 F.2d at 132, 140; *Reynolds Metals Co. v. EPA*, 760 F.2d

549, 562 (4th Cir. 1985); *California & Hawaiian Sugar Co. v. EPA*, 553 F.2d 280, 285–88 (2nd Cir. 1977)). As recently reiterated by the U.S. Court of Appeals for the Fifth Circuit, “Under our precedent, a technological process can be deemed available for BAT purposes even if it is not in use at all, or if it is used in unrelated industries. Such an outcome is consistent with Congress’[s] intent to push pollution control technology” (*Southwestern Elec. Power Co. v. EPA*, 920 F.3d at 1031, citation and internal quotations omitted). The technology bases for BAT are currently in use by MPP facilities across the sector. EPA has identified 14 facilities using enhanced nitrogen removal technologies and 22 using phosphorus removal technologies in both meat and poultry processing and rendering. These technologies are also widely used in municipal wastewater treatment in the U.S. and around the world. Accordingly, EPA proposes to find that such technologies are “available” within the meaning of the statute.

(b) Economic Achievability of Nitrogen and Phosphorus Removal

EPA proposes to find that the proposed BAT effluent limitations for total nitrogen and total phosphorus under the preferred Option 1 are economically achievable. Courts have interpreted economic achievability to mean that the cost of the regulations can be “reasonably borne” by the industry as a whole (*Chem. Mfrs. Ass’n v. EPA*, 870 F.2d 177, 262 (5th Cir. 1989); *BP Exploration & Oil v. EPA*, 66 F.3d 784, 799–800 (6th Cir. 1996); see also *Nat’l Wildlife Fed’n v. EPA*, 286 F.3d 554, 570 (D.C. Cir. 2002); *CPC Int’l Inc. v. Train*, 540 F.2d 1329, 1341–42 (8th Cir. 1976), cert. denied, 430 U.S. 966 (1977)). “Congress clearly understood that achieving the CWA’s goal of eliminating all discharges would cause “some disruption in our economy,” including plant closures and job losses’ (*Chem. Mfrs. Ass’n v. EPA*, 870 F.2d at 252, citations omitted; see also *id.* at 252 n.337, reviewing cases in which courts have upheld EPA’s regulations that projected up to 50 percent closure rates).

EPA assesses economic achievability using two primary approaches. The main approach is to use a discounted cash flow analysis to predict the number of possible closures resulting from implementation of the regulatory option. The closure analysis compares the future costs of compliance to the facility’s estimated future earnings during the same period. For this analysis, EPA is considering a facility

that shows positive future earnings without the rule and negative future earnings with the rule (regardless of magnitude of the earnings) to be a potential closure. EPA often also uses a simple financial screening analysis to compare facility compliance cost-to-revenue (CTR), in order to assess the relative magnitude of the economic impacts to each facility. The higher the ratio of cost to revenue, the greater the potential impact on the facility. Facilities experiencing significant economic impacts may, among other possibilities, reduce production levels, make changes to production and facility operations, forgo future expansion, or close. A cost-to-revenue analysis does not predict these responses but is a reasonable way to assess the likelihood of these types of impacts. On the other hand, some indirect facilities, depending on how their utility fees are structured, may incur lower payments to the receiving POTW due to lower pollutant loads being sent to the POTW.

EPA proposes to find that the preferred Option 1 is economically achievable in terms of affordability to the industry as a whole because results from both the BAT analysis of potential closures and the BAT CTR analysis show that potential closures and financial impacts are limited to a single facility that accounts for approximately one percent of discharging facilities and less than one percent (0.02 percent) of the total universe of MPP facilities. See Section VIII and the Cost and Economic Impact Screening Analyses and the Facility Closure Analysis sections of the RIA for more detailed results. Additionally, EPA also performed a market analysis that estimates the proposed Option 1 would change market prices for major meat and poultry commodities by less than a tenth of a percent. See the Market Impact Analysis section of the RIA for more detailed results.

The annualized social cost of the preferred option is \$232 million and \$227 million using a three percent and seven percent discount rate respectively. The total cost of a rulemaking does not in and of itself inform the Agency about its impact to the industry as a whole without understanding the economic conditions of that industry. For example, an industry with total annual sales of only \$20 to \$30 billion might experience disruptions due to annual costs of this magnitude. However, the MPP industry, as classified under NAICS 3116, is a relatively large industry. The American Survey of Manufacturers estimates that total sales for the industry in 2021 were

\$267 billion.¹² Given the size of the MPP industry, EPA does not consider the total annual cost of the preferred Option 1 to be a determinative factor with respect to economic achievability.

(c) Non-Water Quality Environmental Impacts of Nitrogen and Phosphorus Removal

EPA proposes to find that the non-water quality environmental impacts of the preferred Option 1 (full denitrification, chemical phosphorus removal, and filtering) are acceptable. For further discussion of these impacts, see Section X.

EPA’s preferred Option 1 for direct dischargers, which EPA estimates would require 125 of 171 total direct dischargers to install additional wastewater controls, would add an estimated additional 78,989 MWh of demand to the U.S. power grid. This would increase the total power demand of the U.S. by 0.0000019 percent, based on the U.S. generating 4,108 billion MWh in 2021 nationwide (EIA, 2021).¹³ Preferred Option 1 for direct dischargers is also estimated to increase the US CO₂ emissions by 34,898 tons per year, or an 0.00058 percent increase of the nationwide total (*Climate Change Indicators: U.S. Greenhouse Gas Emissions*. USEPA. 2023).¹⁴ In 2020, U.S. CO₂ greenhouse gas emissions totaled 5,981 million metric tons of CO₂ equivalents. EPA also estimates that an additional 286,685 tons of sludge will be generated under preferred Option 1. EPA proposes to find that the additional energy requirements, greenhouse gas emissions and sludge production are acceptable under the Act.

2. Indirect Discharging Facilities (PSES/PSNS)

To control pollutants discharged by indirect discharging facilities, EPA establishes categorical pretreatment standards for existing sources (PSES) and for new sources (PSNS). Before establishing PSES/PSNS for a pollutant, EPA examines whether the pollutant “passes through” a POTW or interferes with the POTW operation or sludge disposal practices. In determining whether a pollutant passes through POTWs for these purposes, EPA typically compares the percentage of a pollutant removed by well-operated

¹² U.S. Census Bureau. (2022). 2021 Annual Survey of Manufacturers: Summary Statistics for Industry Groups and Industries in the U.S.: 2018–2021.

¹³ U.S. Energy Information Administration. 2021. *Electric Power Annual Report*. www.eia.gov/electricity/annual.

¹⁴ <https://www.epa.gov/climate-indicators/climate-change-indicators-us-greenhouse-gas-emissions>.

POTWs performing secondary treatment to the percentage removed by direct dischargers operating the BPT/BAT technology basis. A pollutant is determined to pass through POTWs when the average percentage removed nationwide by well-operated POTWs performing secondary treatment is less than the average percentage removed by direct dischargers operating the BPT/BAT technology basis. EPA establishes pretreatment standards for those pollutants regulated under BPT/BAT that pass through POTWs. In this way, the standards for indirect dischargers are equivalent to direct dischargers in that the treatment capability and performance of POTWs is recognized and taken into account in regulating the pollutants from indirect dischargers.

The *Meat and Poultry Products POTW Passthrough Analysis* (the Passthrough Analysis) indicates that oil & grease, BOD, TSS, TN and TP pass through POTWs (USEPA. 2023. DCN MP00309). EPA did not conduct its traditional passthrough analysis for the management of high chloride wastestreams that are being included for consideration as an additional regulated waste stream under all the proposed regulatory options. Rather, for chlorides, because the BAT technology for the proposed zero-discharge limitations and standards would achieve 100 percent removal of chlorides, and POTWs do not remove chlorides, the record supports a finding of passthrough absent this analysis.

(a) BAT Rationale for PSES/PSNS for Nutrients

After considering all the relevant statutory factors and wastewater technologies presented in this preamble and the TDD, EPA is not proposing to establish pretreatment standards (PSES/PSNS) for nitrogen and phosphorus removal for indirect dischargers under its preferred Option 1 for the reasons discussed in Section VII.E below. However, EPA is soliciting comment on the other proposed regulatory options (Options 2 and 3) and any other regulatory options that would include such pretreatment standards for nutrients (See Section VII.D below).

(b) BPT/BCT Rationale for PSES/PSNS for Conventional Pollutants

Under preferred Option 1, EPA proposes to establish PSES based on the BPT level of control for conventional pollutants (BOD, TSS, oil & grease) based on screening and DAF technologies. After considering all the relevant factors and wastewater technologies presented in this preamble and in the TDD, EPA proposes to find

that this technology is available, imposes costs that are not wholly disproportionate to effluent reduction benefits, and has acceptable non-water quality environmental impacts.

(c) Technological Availability

Courts have interpreted BPT to represent the “average of the best” performance (*EPA v. National Crushed Stone Assn.*, 449 U.S. 64, 76 (1977). *See also, Kennecott Copper v. EPA*, 612 F.2d 1232, 1238 (10th Cir. 1979); *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1059, 1062 (D.C. Cir. 1978); *American Petroleum Institute v. EPA*, 540 F.2d 1023, 1034 (10th Cir. 1976); *American Frozen Food Institute v. Train*, 539 F.2d 107, 117, 119 (D.C. Cir. 1976); *American Meat Inst. v. EPA*, 526 F.2d 442, 462 (7th Cir. 1975); cert. denied, 430 U.S. 922 (1977); *Tanners’ Council of America, Inc. v. Train*, 540 F.2d 1188, 1191 (4th Cir. 1976)). The technologies forming the bases for the proposed BPT revisions represent the average of the best performance as they are in use by MPP facilities across the subcategories. EPA has identified 21 indirect discharging facilities using screening and DAF technologies in both meat and poultry processing and rendering. In addition, these technologies are widely used at direct discharging facilities. Most facilities use some type of oil & grease removal technology, and DAF is the most commonly used by MPP facilities. Furthermore, these technologies are widely used by a variety of industrial classes and in municipal wastewater treatment for the control of conventional pollutants. See the TDD for additional discussion of DAF. DAF technologies have a small footprint, and EPA has no data indicating that the facilities that would be subject to pretreatment standards for conventional pollutants under the preferred Option 1 would not be able to implement DAF technologies at existing and new facilities.

(d) Costs of Conventional Pollutants Removal (BPT/BCT)

Caselow and the CWA’s legislative history indicate that to revise BPT, EPA is to employ a limited cost-benefit balancing test, applying controls unless the costs are wholly disproportionate to the effluent reduction benefits (*Chem. Mfrs. Ass’n v. EPA*, 870 F.2d 177, 204, 205 (5th Cir. 1989); *Kennecott Copper v. EPA*, 612 F.2d 1232, 1238 (10th Cir. 1979); *American Meat Inst. v. EPA*, 526 F.2d 442, 453 (7th Cir. 1975); cert. denied, 430 U.S. 922 (1977); *American Frozen Food v. Train*, 539 F.2d 107, 117, 119 (D.C. Cir. 1976). *See also, A Legislative History of the Water*

Pollution Control Act Amendments of 1972, 93d Cong. 1st Sess. at 169–170 (Comm. Print 1973)). EPA’s analysis shows that the effluent reduction benefits are not wholly disproportionate to the costs of conventional pollutant removal technologies under the preferred Option 1 (see Section VIII.A for additional details). The costs are \$32.84 million, and the effluent reduction is 234 million pounds per year of pollutants removed. Additionally, upgrading from the candidate BPT to BCT candidate technology (which is screening/grit removal, DAF, anaerobic lagoon, and biological treatment) did not pass the BCT cost test, and thus, EPA is proposing to set BCT as equal to BPT (see Section VIII B.).

(e) Non-Water-Quality Environmental Impacts (BPT/BCT)

The record supports that removal of conventional pollutants under the preferred Option 1 would have acceptable non-water quality environmental impacts, including energy requirements (see Section X of this preamble).

EPA’s preferred Option 1 includes removal of the conventional pollutants BOD, oil & grease, and TSS from the meat and poultry facility’s discharge before sending it to the POTW for further treatment. Under Option 1, 719 out of 3,708 indirect discharging facilities would incur an estimated 1,699 MWh of energy demand. Although most of this energy demand would be a shift from the POTW to the MPP facility, some portion of this could result in an additional energy demand to the U.S. power grid. This total power demand under preferred Option 1 is 0.000000041 percent of the U.S. power generation (based on 4,108 billion MWh in 2021 nationwide), which EPA proposes to find is acceptable (EIA, 2021).¹⁵ EPA also proposes to find that the additional GHG increases would be acceptable. Preferred Option 1 for indirect dischargers is estimated to increase the U.S. CO₂ emissions by 753 tons per year, or an 0.000013 percent increase of the nationwide total (based on U.S. CO₂ greenhouse gas emissions of 5,981 million metric tons of CO₂ equivalents in 2020) (*Climate Change Indicators: U.S. Greenhouse Gas Emissions*. USEPA. 2023). Similarly preferred Option 1 for indirect dischargers would increase the sludge production by an estimated 11,961 tons of sludge per year, across 719 indirectly

¹⁵ U.S. Energy Information Administration. 2021. *Electric Power Annual Report*. www.eia.gov/electricity/annual.

discharging facilities, which EPA also proposes to find to be acceptable.

D. Rationale for Other Regulatory Options Proposed (Options 2 and 3)

EPA also evaluated the applicability of the statutory factors with respect to the other regulatory options proposed (Options 2 and 3), although EPA is not proposing these as the preferred option for the reasons discussed in Section VII.E below. With respect to technological availability, the technologies assessed for Options 2 and 3 are widely used in municipal wastewater treatment in the U.S. and around the world. The record supports that such technologies are available in that they effectively remove the pollutants addressed in this rulemaking. However, there may be constraints on availability of nutrient removal technologies with respect to indirect dischargers (as discussed in Section VII.E below), and EPA solicits information about such potential constraints. With respect to the statutory cost tests for BPT, BCT and BAT for Options 2 and 3, see Section VIII below. EPA's comparison of costs to benefits of the proposed BPT/BCT limitations under those options would historically support a finding that the costs are not "wholly disproportionate" to the benefits. Similarly, the possible facility closures and cost to revenue ratio of the proposed BAT limitations are within the range of impacts that EPA has historically considered to be economically achievable, as required by CWA section 301(b)(2)(A) (33 U.S.C. 1311(b)(2)(A)). EPA reasonably considered impacts on small businesses in setting production thresholds for applicability based on avoiding cost to revenue ratios indicating likelihood of economic impacts, as identified in the Regulatory Flexibility Analysis guidance (CWA section 304(b)(2)(B), authorizing consideration of "such other factors as the Administrator deems appropriate" in establishing BAT). With respect to non-water quality environmental impacts of the BPT/BCT and BAT technologies under Options 2 and 3, see Section X below. EPA solicits comment on whether these proposed options—or other regulatory options based on different production thresholds or technologies—would meet the applicable statutory factors and should form the basis of any final rule.

E. Rationale for Rejecting Options 2 and 3 as the Preferred Option

As discussed above, EPA considered two proposed options (Options 2 and 3) that would be more expansive than Option 1. EPA did not select these as

the preferred option due to several potential concerns. First, EPA is concerned that the more expansive options may impede the Biden Administration's initiatives to expand independent meat and poultry processing capacity and enhance the resilience of the food supply chain, as reflected in Executive Order (E.O.) 14036 (July 9, 2021). This is a crucial Administration priority to protect against the type of supply chain disruptions that arose during the COVID-19 pandemic. In issuing the E.O., the Administration explained that without such diversification, "our food supply chains are susceptible to shocks," and that "[w]hen COVID-19 or other disasters such as fires or cyberattacks shutter a plant, many ranchers have no other place to take their animals" See *Fact Sheet: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain* (The White House. 2022) (noting that "our overreliance on just a handful of giant processors leaves us all vulnerable, with any disruptions at these bottlenecks rippling throughout our food system."').¹⁶

Relative to many other industries regulated by ELGs, the MPP industry plays a critical role in the nation's food supply chain. The supply chain disruptions during the COVID-19 pandemic highlighted the problems with the consolidation of the industry over the last 50 years and how susceptible it is to shocks. The pandemic disrupted both the market supply and demand patterns typically observed. As the demand for meat and poultry from restaurants declined dramatically in response to the public lock down efforts, the demand for meat from grocery stores and on-line sources rose.¹⁷ At the same time, COVID began to spread rapidly through meat and poultry processing facilities. This resulted in a significant short-run disruption to supply as facilities temporarily closed and many more reduced line speeds due to both worker shortages and safety concerns.¹⁸ These combined changes to demand and supply led to shortages and higher

prices for many meat and poultry commodities (The White House. 2022).

EPA's analysis showed Options 2 and 3 have more potential facility closures than Option 1 due to the requirements imposed on additional facilities, thus potentially harming the Administration's priority to expand and diversify the meat and poultry processing industry. For this reason, EPA is selecting Option 1 as the preferred proposed option at this time, rather than more expansive options, as it would allow the Agency to achieve significant reductions in nutrients and conventional pollutants in a way that avoids potential supply chain disruptions in the nation's food supply, consistent with the policy direction in the E.O. While EPA's analysis shows Option 1 may result in 16 possible facility closures, this represents 0.03 percent of total industry facilities, and thus, any supply chain disruptions from such possible closures would be minimal, temporary and localized. In addition, the forecasted change in industry production levels due to the preferred Option 1 is estimated to be only 0.01 percent. By comparison, EPA's analysis shows that potential facility closures would be 22 under Option 2 and 53 under Option 3, supporting EPA's selection of Option 1 as the preferred proposed option. See the Other Economic Factors section of the RIA for a more in-depth discussion of this issue.

The CWA gives EPA authority to consider these policy concerns in determining BAT (CWA section 304(b)(2)(B) (authorizing consideration of "such other factors as the Administrator deems appropriate" in assessing BAT); *Weyerhaeuser v. Costle*, 590 F.2d 1011, 1045 (D.C. Cir. 1978) (Congress intended that EPA have discretion "to decide how to account for the consideration factors, and how much weight to give each factor.")).

At the same time, EPA intends to consider any impact of federal financial assistance on wastewater treatment upgrades at these facilities. EPA seeks comment on whether other federal funds or other programs could reduce or minimize potential impacts of the more expansive options on the Administration's efforts to support the meat and poultry supply chain.

EPA has also heard from small entity representatives (SERs) during EPA's SBREFA panel process (*Final Panel Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Meat and Poultry Products Effluent Limitations Guidelines Rulemaking*. USEPA. 2023. DCN MP00347) that there are potential

¹⁶ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/>.

¹⁷ Hobbs J.E. (2021). The Covid-19 pandemic and meat supply chains. *Meat science*, 181, 108459. <https://doi.org/10.1016/j.meatsci.2021.108459>.

¹⁸ Whitehead, D., & Brad Kim, Y.H. (2022). The Impact of COVID 19 on the Meat Supply Chain in the USA: A Review. *Food science of animal resources*, 42(5), 762–774. <https://doi.org/10.5851/kosfa.2022.e39>.

concerns about the availability of nitrogen removal technologies under Options 2 and 3, due to space limitations for such technologies at some facilities. Although these technologies are currently in use in the industry, these technologies require a greater land area than DAF (the conventional pollutant control technology that is the basis for the limits on indirect dischargers under Option 1), particularly at facilities with high wastewater flows. EPA has heard concerns from SERs with respect to facilities located in or near urbanized areas where sufficient space may not be available to install certain components of nitrification/denitrification technology, such as aerobic and anaerobic lagoons. Industry stakeholders have also indicated that zoning restrictions may prevent them from acquiring adjacent parcels of land that may be needed for installation of such technology. EPA estimates that 143 indirect discharging facilities would incur costs to comply with nitrogen and phosphorus effluent limits under Option 2 and 777 such facilities would incur costs to comply with limits under Option 3, many of which would need to install nitrogen control technologies for the first time. EPA would like additional information about available space at such facilities, as well as information on other high rate/small footprint nutrient removal technologies that might be available to treat MPP wastewater.

EPA also heard from SERs concern about the availability of nutrient control technologies for indirect dischargers under Options 2 and 3 due to ongoing supply chain issues and labor shortages in the wastewater treatment industry. While these technologies are widely available and have been used in many industrial and municipal wastewater treatment facilities across the country to remove nutrients, SERs have raised concerns about the timing of such availability. The amount of a good supplied for a market can take time to adjust to a sudden large increase in demand. In addition, if there is a temporary spike in demand resulting from many facilities needing to come into compliance at the same time, there may not be an incentive for the companies that make and install these technologies to increase their long-term capacity. Given the large number of indirect facilities that would need to install new nutrient removing treatment technologies under Options 2 and 3, there is a potential for implementation delays. These implementation delays could result in facilities operating out of compliance or temporarily closing until

they are able to get the new control technology in place. See the Other Economic Factors Section of the RIA for a more in-depth discussion of this issue.

Given the large number of indirect discharging facilities that would likely need to install nutrient removal technologies under Options 2 and 3, and the ongoing supply chain issues, it is not clear whether these technologies will be available in sufficient quantity to allow for installation within the three-year statutory timeframe for pretreatment standards under CWA section 307(b) (33 U.S.C 1317(b)). EPA solicits additional information about production capacity for nutrient control technologies in the industry, given that the Nation is currently in the process of significant investments in water infrastructure as part of the Bipartisan Infrastructure Law.

In addition, EPA is considering whether there are compliance flexibilities for indirect discharging facilities that would allow for additional time beyond the three-year statutory timeframe in CWA section 307(b) (33 U.S.C. 1317(b)), in light of potential concerns about availability of technology due to supply chain issues. EPA solicits comment on how it could implement new pretreatment standards consistent with this provision recognizing that there could be supply chain issues preventing facilities from installing the treatment technologies. For example, one option could be to allow phased implementation based on size thresholds, whereby larger facilities would be required to install such technologies within three years of the effective date of the rule, while smaller facilities would be allowed additional time to install such technologies, based on a demonstration that the facility is contractually bound to procure the technology within a specified time of the effective date. EPA solicits comment on such an approach, or other implementation flexibilities for indirect discharging facilities, should the Agency decide to finalize a rule based on a more expansive option than the preferred Option 1.

Should the Agency decide to promulgate a rule based on a more expansive option, EPA is considering conditional limits under these options (see Section VII.F) to reduce costs and eliminate the need for redundant treatment. To better understand the potential use of such conditional limits, EPA solicits information about how many POTWs that receive MPP wastewater have nitrogen and phosphorus removal technologies that could provide an equivalent level of treatment, and whether such flexibilities

may result in significant cost savings, including any relevant data on incremental cost savings or other benefits.

EPA has also heard from industry representatives that since nitrification/denitrification technologies also remove organic pollutants (as measured by BOD₅), there is some concern about the ability of POTWs to meet their discharge limitations should indirect discharging MPP facilities be required to meet nitrogen pretreatment standards. The secondary treatment regulations at 40 CFR 133.102 require POTWs to achieve a 30-day average percent removal of BOD and TSS of not less than 85 percent. If MPP facilities currently discharge a significant quantity of organic pollutants to a POTW, that load would be reduced after meeting any nitrogen pretreatment standards. That may therefore reduce the percent reduction in BOD achieved at the POTW since the POTW would be receiving more dilute flows. While EPA notes that the secondary treatment regulations at 133.103(d) allow for consideration of less concentrated influent wastewater and the substitution of a lower percent removal requirement or a mass loading limit for the percent removal requirement by the Regional Administrator or State Director, which could address this issue, EPA solicits additional comments on this concern from the POTW community.

F. Additional Provisions

In addition to seeking comment on the three proposed regulatory options, EPA solicits public comment on three additional provisions that would apply with respect to some of these options: First, with respect to the pretreatment standards for nitrogen and phosphorus that would apply to indirect dischargers under Options 2 and 3, EPA solicits comment on a provision that would allow an exemption from these limits for indirect discharging MPP facilities discharging to POTWs that provide equivalent nutrient removal as would be required under the proposed PSES/PSNS. Such “conditional limits” have been used in previous ELGs, such as the Iron and Steel Manufacturing Effluent Guidelines (40 CFR 420.15). EPA is considering including such a provision in any final rule that would contain nutrient pretreatment standards (such as under Options 2 or 3) because nitrogen and phosphorus removal technologies involve more costly, advanced treatment than is required for conventional pollutants and some facilities have already shared costs to upgrade their receiving POTW to remove nutrients to meet Water Quality Based Effluent

Limits in the POTW's discharge permits. If the receiving POTW is providing equivalent nutrient removal, then the MPP facilities may not need to pretreat their wastewater to remove nutrients to achieve an equivalent environmental outcome. Conditional provisions that allow this flexibility, provided the POTW agrees, would reduce costs for indirect dischargers where the POTW already has nutrient removal technologies and eliminate redundant treatment. For conditional limits applied to a MPP facility, EPA solicits comment on how to structure such a provision to include factors such as what treatment at the POTW could be considered equivalent, whether the POTW permit should contain nitrogen and phosphorus effluent limits at least as stringent as the pretreatment standards that would be required at the MPP facility, how to demonstrate compliance, how to ensure that the POTW has the capacity and ability to adequately treat such wastewaters while maintaining its design pollutant capacity reserved for the residential population, and the process by which the facility would request the conditional limits be applied and receive approval from their control authority.

Second, EPA solicits comment on including *E. coli* as a regulated parameter for direct dischargers because the presence of *E. coli* is a more reliable indicator of pathogen pollution than the presence of fecal coliforms. *E. coli*, a predominate member of normal gut microflora in warm blooded animals, has a limited capacity for reproduction outside of the intestinal tract, making its presence in environmental samples a strong indicator of fecal contamination (Odonkor and Ampofo. 2013).¹⁹ Fecal coliforms, a large group of thermotolerant bacteria, include some bacterial species of environmental origin and therefore can result in false positives for fecal contamination (Doyle and Erickson. 2006).²⁰ EPA updated its recreational water quality standards in 2012 (USEPA. 2012. EPA-820-F-12-058) and the Revised Total Coliform Rule in 2013 (USEPA. 2013. EPA 815-B-13-001) to reflect the current state of knowledge for indicator bacteria. Given these updates in the use of bacterial indicators for water quality, and that current disinfection technology can consistently reduce the presence of

these indicator bacteria below the current MPP ELGs, EPA is soliciting comment on more stringent fecal coliform limits for direct dischargers based on BCT/BPT as well as limits for *E. coli* for direct dischargers based on BAT as part of the preferred option in this proposed rule. EPA also solicits comment on replacing fecal coliform limits with *E. coli* limits in any final rule to reduce redundancy in monitoring and limit requirements.

Third, EPA solicits comment on including BAT/NSPS/PSES/PSNS chloride limits for certain wastestreams to remove salts from facility discharges in any final rule based on BAT. In the meat processing industry, salts may be used in further processing and for water softening purposes. The presence of chlorides in discharges to surface waters can adversely affect aquatic organisms because of their sensitivity to concentrations of salt. A review of chlorides data in 2021 discharge monitoring reports from ICIS-NPDES showed about 70 percent of MPP facilities are discharging wastewater with chloride concentrations exceeding ambient water quality criteria of 230 mg/L and secondary drinking water standards of 250 mg/L (the reported 70th percentile of these data was 254 mg/L). Although removing salt is difficult and can be expensive, and therefore treating the whole wastewater effluent may not be the most efficient way to control chlorides, some facilities have certain operations with process wastewater that is kept separate from the main waste stream. These processes include hide processing, water softening regeneration wastewater, meat and poultry koshering, and further processing operations involving marinating and curing. Segregation and treatment of these process wastestreams is currently in place at some MPP facilities. Segregation and management of these high chloride wastestreams could result in targeted reductions of up to 477 million pounds of salt discharges annually at a cost of \$172 million annually if applied to 466 facilities under Options 1, 2 and 3.

EPA is considering salt recycle/evaporation systems as the technology basis for establishing BAT/NSPS/PSES/PSNS limitations to control chlorides discharged in high chlorides waste streams in any final rule. EPA is considering effluent limitations for chlorides for direct and indirect discharging facilities in any subcategory with production greater than 5 million pounds per year with high chlorides processes. Analysis indicates that these technologies may be available, economically achievable, and have

acceptable non-water quality environmental impacts. See section 12 of the TDD for additional details on the non-water quality environmental impacts of this provision. EPA is not including this provision as part of the preferred option in today's proposal, but rather is soliciting comment on including such a provision in any final rule. In particular, EPA solicits comment on the potential costs of such a provision, and specifically on the cost methodology and results contained in the TDD.

G. Small Business Considerations From the Small Business Advocacy Review Panel

Although this proposed rule would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities and completed the Small Business Advocacy Review (SBAR) panel to take input from small entities. EPA's proposed preferred option would not expand applicability to smaller direct discharging facilities, but it would propose first-ever national pretreatment standards for indirect discharging facilities. EPA's analysis (see Section VIII) shows that Option 1 would apply to 96 small firms. This section discusses the 5 recommendations from the SBAR panel.

EPA recognizes that under all options considered some facilities will be subject to pretreatment standards and/or categorical discharge standards for the first time, and therefore, may not be familiar with certain aspects of NPDES permitting and/or pretreatment standards. EPA also heard concerns during the SBAR panel outreach meetings with SERs specifically related to a lack of familiarity with effluent guidelines and pretreatment standards. One of the five recommendations was for EPA therefore to solicit comments on what information small facilities would find beneficial (e.g., terms to know for determining applicability and compliance, information from the POTW or control authority, information on the general permitting process, wastewater operator requirements, and how to measure annual production) that could be addressed through guidance or other materials that EPA could provide should any final rule expand applicability to small firms beyond the current rule. EPA therefore solicits comment from small entities on this topic.

EPA also heard from SERs about concerns related to production thresholds for applicability of the ELGs. While EPA's proposed regulatory

¹⁹ Odonkor, S.T.; Ampofo, J.K. 2013. *Escherichia coli* as an indicator of bacteriological quality of water: An overview. Microbiology Research, 4(1), e2. <https://doi.org/10.4081/mr.2013.e2>.

²⁰ Doyle, M.P.; Erickson, M.C. 2006. *Closing the door on the fecal coliform assay*. Microbe. 1, 162–163.

options minimize impacts on small entities, another recommendation that EPA also solicits comment on is whether the proposed production thresholds could be adjusted to further minimize such impacts, particularly with respect to Options 2 and 3 as those options expand coverage to additional facilities as compared to Option 1. A third recommendation that EPA also solicits comment on is for alternatives to production thresholds for determining regulation, such as water usage, specifically as a way to minimize impacts to small firms or to provide an alternative means of determining applicability to small firms that may not track production.

Under Options 2 and 3, EPA is considering conditional limits for facilities that discharge to POTWs with nitrogen and phosphorus limits and treatment capabilities equivalent to the treatment that would be needed to comply with any new proposed requirements. For these indirect discharging facilities, with documentation and approval by the POTW/control authority, the MPP facilities would not need to treat the wastewater for nitrogen and phosphorus before discharging to the POTW. A fourth Panel recommendation that EPA also requests comment on is the inclusion of conditional limits, and specifically what documentation and approval by the POTW/control authority would be sufficient to establish conditional limits as a compliance mechanism.

The fifth recommendation was for EPA to consider and take comment on a longer or flexible timeline for small entities to meet proposed regulations. EPA requests comment from small entities on what kind of timeline flexibilities would be helpful. See the SBREFA panel report for additional details regarding these and other considerations that were raised by SERs (USEPA. 2023. DCN MP00347).

VIII. Costs, BPT Wholly Disproportionate Cost Test, Economic Achievability, and Other Economic Impacts

This section provides an overview of the methodology EPA used to assess the costs and the economic impacts of the three options considered in the proposed rule and summarizes the results of these analyses. EPA separately assessed the cost and economic impacts of the BPT, BCT, and BAT requirements for each regulatory option proposed. Then EPA assessed the combined economic effects of all BPT, BCT, and BAT requirements for each option for purposes of implementing the

Regulatory Impact Analysis required by E.O. See the RIA and supporting information in the docket for additional detail. The proposed rule would revise BPT for conventional pollutants and consider whether more stringent BCT limits pass the two-part BCT cost test (51 FR 24974 (July 9, 1986)). For BPT, EPA performed a “wholly disproportionate” cost test for all direct and indirect discharging facilities that would be required to control conventional pollutants under the three proposed options. For BCT, EPA evaluated the reasonableness of BCT candidate technologies—those that remove more conventional pollutants than BPT—by applying a two-part cost test. The two-part “cost reasonableness” test requires: (1) The cost per pound of conventional pollutant removed by dischargers in upgrading from BPT limits to the candidate BCT option must be less than the cost per pound of conventional pollutant removal by upgrading POTWs from secondary treatment to advanced secondary treatment (“the POTW test”); and (2) an assessment of industry costs per pound removed in upgrading from BPT to BCT relative to the costs per pound removed in going from no treatment to BPT, followed by a comparison of that ratio to the analogous ratio for POTWs (“the industry cost effectiveness test”). The industry ratio must be less than the POTW ratio to pass the test.

The proposed rule would also revise BAT for non-conventional pollutants (nitrogen and phosphorus). EPA assessed the economic achievability of BAT for all direct and indirect facilities that would have requirements for non-conventional pollutants under the proposed options. In developing ELGs reflecting BAT, and as required by CWA section 301(b)(2)(A) (33 U.S.C. 1311(b)(2)(A)), EPA evaluates the economic achievability of the regulatory options to assess the impacts of applying the limitations and standards to the industry as a whole, which typically includes an assessment of incremental facility closures attributable to a regulatory option. As described in more detail below, this proposed ELG is expected to result in incremental costs when compared to baseline operations for many facilities. The cost and economic impact analysis for this proposed rulemaking focuses on understanding the magnitude and distribution of compliance costs across the industry and the broader market impacts. EPA used indicators to assess the impacts of the three regulatory options on the MPP industry. EPA considered the total cost to industry and

change in the number and capacity of specific facilities expected to close under the proposed option, as well as the other options considered, compared to baseline. EPA also analyzed the ratio of compliance costs to revenue to see how the three options would change the number of plants and their owning entities that exceed thresholds indicating potential financial strain. In addition to the analyses supporting the economic achievability of the regulatory options, EPA conducted other analyses to (1) characterize other potential impacts of the regulatory options (*e.g.*, on market prices) and (2) to meet the requirements of E.O.s or other statutes (*e.g.*, E.O. 12866, Regulatory Flexibility Act, Unfunded Mandates Reform Act).

A. BPT Wholly Disproportionate Cost Test

EPA estimated facility-specific costs and loads for two levels of treatment technology reflected in the regulatory options developed. The first level of treatment was the use of DAF technology. This level of technology is already in place for direct discharging facilities reflecting the existing rule BPT, BCT and BAT requirements but would be a new requirement for indirect discharging facilities. The CWA requires that the EPA consider “the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application,” and these costs should not be wholly disproportionate to the corresponding effluent reduction benefits. As the U.S. Court of Appeals for the Fifth Circuit stated, “The courts of appeal have consistently held that Congress intended section 304(b) to give the EPA broad discretion in considering the cost of pollution abatement in relation to its benefits and to preclude the EPA from giving the cost of compliance primary importance” (*Chemical Manufacturers Assn. v. U.S. EPA*, 870 F.2d 177, 204, (5th Cir. 1989)).

Table VIII–1 presents the annualized after-tax technology costs and associated pollutant load reductions for individual subcategories of facilities and the industry as a whole. Although BPT applies to both conventional and nonconventional pollutants, DAF technology is primarily employed to address conventional pollutants, so only conventional pollutant reductions are shown. Load reductions reflect the change in pollutants being discharged from regulated facilities to their receiving POTWs. The table demonstrates that under BPT, there would be significant reductions in conventional pollutant loading for each subcategory and the industry as a

whole, across all three options. Based on these results, EPA proposes to find that BPT costs for conventional pollutant reductions under the preferred Option 1 are not wholly

disproportionate to the corresponding effluent reduction benefits. EPA also solicits comment on whether the BPT costs of conventional pollutant reductions under regulatory Options 2

and 3, as reflected in the table below, are also not wholly disproportionate to the effluent reduction benefits.

TABLE VIII–1

Rule option	Sub-categories	Total annualized BPT costs ²¹ (millions of \$2022)	Oil & grease	BOD	TSS	Total pollutants	Oil & grease	BOD	TSS	Total pollutants
			BPT Reductions (M lbs/yr)				BPT Ratio lbs/\$			
Option 1	A–D	\$2.00	3	7	3	13	\$0.63	\$0.31	\$0.65	\$0.16
	F–I	2.46	6	0	0	6	0.43	18.15	36.31	0.41
	J	0.74	0	2	1	3	2.91	0.42	0.83	0.26
	K	7.08	3	61	100	164	2.65	0.12	0.07	0.04
	L	1.66	0	8	13	22	4.60	0.20	0.12	0.08
Option 2	All	13.93	12	77	118	207	1.14	0.18	0.12	0.07
	A–D	2.00	3	7	3	13	0.63	0.31	0.65	0.16
	F–I	2.46	6	0	0	6	0.43	18.15	36.31	0.41
	J	0.74	0	2	1	3	2.91	0.42	0.83	0.26
	K	7.08	3	61	100	164	2.65	0.12	0.07	0.04
Option 3	L	1.66	0	8	13	22	4.60	0.20	0.12	0.08
	All	13.93	12	77	118	207	1.14	0.18	0.12	0.07
	A–D	15.76	7	14	7	28	2.25	1.10	2.32	0.56
	F–I	6.89	11	0	0	11	0.64	27.30	54.60	0.62
	J	0.79	0	2	1	3	3.10	0.45	0.88	0.27
	K	7.75	3	63	104	170	2.78	0.12	0.07	0.05
	L	1.66	0	8	13	22	4.60	0.20	0.12	0.08
	All	32.84	21	88	126	234	1.55	0.37	0.26	0.14

B. BCT Cost Test

In July 1986, EPA explained how it developed its methodology for setting effluent limitations based on BCT (51 FR 24974). EPA evaluates the reasonableness of BCT candidate technologies—those that remove more conventional pollutants than BPT—by applying a two-part cost test: a POTW test and an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology, and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs to advanced secondary treatment (*i.e.*, “the POTW test”). The upgrade cost to industry must be less than the POTW benchmark of \$0.25 per pound (in 1976 dollars) or \$1.48 per pound (in 2022 dollars). In the industry cost-effectiveness test, the ratio of the cost per pound to go from BPT to BCT divided by the cost per pound to go from raw wastewater to BPT for the industry must be less than 1.29 (that is,

the cost increase must be less than 29 percent).

For purposes of this analysis, for the preferred Option 1, EPA compared the cost of upgrading from the candidate BPT (based on screens followed with DAF technology for 720 large indirect facilities) to BCT (based on biological treatment to achieve full denitrification and chemical precipitation with filtration as described for BAT in Section VII C.1). The cost for these 719 facilities to upgrade from candidate BPT to candidate BCT would range from \$0.26 to \$1.32 per pound of pollutant removed depending on the subcategory. Option 2 involves the same 719 facilities receiving conventional pollutant removal technology; thus, the cost and results of this test would be the same as Option 1. Option 3 would require 1,485 indirect facilities to implement conventional pollutant removal technology, and the cost for these facilities to upgrade from candidate BPT to candidate BCT would range from \$0.30 to \$1.03 per pound of pollutant removed depending on the subcategory. The section 9 of the TDD provides more details on the calculations of the BCT cost tests.

In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants

than the candidate for BPT, and whether those technologies are cost-reasonable according to the prescribed BCT tests. For Subcategories A through D, F through J, K, and L, EPA identified technologies that can achieve greater removals of conventional pollutants than the candidate BPT standards; however, this technology is full treatment (based on screening/grit removal, DAF, anaerobic lagoon, biological treatment, chemical phosphorus removal, sand filter, and solids handling), and EPA proposes to find that it does not pass the BCT cost test under any of the proposed options. Furthermore, since these limits are for indirect dischargers that send their wastewater to POTWs, and POTWs are designed to remove BOD, TSS, and oil & grease, EPA considers screens with DAF treatment an appropriate pretreatment technology for PSES/PSNS. Accordingly, EPA proposes to establish BCT effluent limitations equal to the candidate BPT limitations based on screens followed with DAF for indirect dischargers in these subcategories.

C. Economic Achievability Analysis for BAT

For the second level of treatment for toxic and non-conventional pollutants, direct dischargers must meet BAT, and

²¹ All BPT and BAT costs were annualized using the weighted average cost of capital (WACC) for facilities. The WACC was derived based on facility responses to Industry Survey. See Section 5.2.3 of the Regulatory Impact Analysis for a detailed explanation of how the WACC was derived.

indirect dischargers must meet pretreatment standards based on BAT. In setting BAT, EPA is required to evaluate costs and determine if they can be reasonably borne by the industry. EPA considers not only technology cost but also engineering and process changes as well as energy requirements of implementing the new technology. The cost estimates developed by EPA for the technologies considered for BPT, BCT, and BAT incorporate these factors as additional cost elements.

1. Facility Closure Analysis (BAT)

Estimates of possible facility closures are the traditional way EPA considers economic achievability. A discounted cash-flow analysis was performed on detailed questionnaire respondents and the results were then extrapolated to all

facilities incurring costs under each option. For more information on this approach, see the RIA. Table VIII–2 shows the number of facilities with BAT costs and the estimated possible closures by production subcategory for each option. The table also shows the relative percentage of facilities with costs and total discharging facilities that are estimated to close. EPA estimated that the preferred Option 1 would have only a single possible closure and proposes to find that this would be considered economically achievable under any reasonable measure of impacts. Under Options 2 and 3 EPA estimated that there are 19 and 29 total possible closures, respectively. This equates to 7 percent of the 269 facilities with BAT costs under Option 2, and 3 percent of the 913 facilities with BAT

costs under Option 3. However, to understand the economic impact of these options on the industry it is necessary to consider these possible closures within the context of the total number of industry facilities. Neither Options 2 nor 3 have estimated potential closures that exceed 1 percent of the 3,897 discharging facilities. If the zero discharge facilities were also factored in, these percentages would be smaller still. These two options were developed to limit BAT requirements to just the larger discharging facilities that tend to be better able to afford the nutrient reduction technologies. EPA solicits comment on whether Options 2 and 3 would be economically achievable for the industry as a whole, based on the level of possible facility closures reflected in the table below.

TABLE VIII–2—POSSIBLE FACILITY CLOSURES DUE TO BAT COSTS BY REGULATORY OPTION

Rule option	Production sub-categories					Total facilities
	Meat first	Meat further	Poultry first	Poultry further	Rendering	
1:						
Facilities with BAT Costs	30	9	64	5	18	126
Estimated Possible Closures	0	0	1	0	0	1
% of facilities with costs	0.0	0.0	1.6	0.0	0.0	0.8
% of all Discharging facilities	0.0	0.0	0.0	0.0	0.0	0.0
2:						
Facilities with BAT Costs	85	9	142	5	28	269
Estimated Possible Closures	10	0	8	0	1	19
% of facilities with costs	11.8	0.0	5.6	0.0	3.6	7.1
% of all Discharging facilities	0.3	0.0	0.2	0.0	0.0	0.5
3:						
Facilities with BAT Costs	137	371	190	100	115	913
Estimated Possible Closures	11	3	11	1	3	29
% of facilities with costs	8.0	0.8	5.8	1.0	2.6	3.2
% of all Discharging facilities	0.3	0.1	0.3	0.0	0.1	0.7

To assess the economic achievability of BAT technologies, EPA also compared facility level costs to estimated revenue to screen for potential financial impacts to facilities. EPA considered total facility costs relative to industry sales, the number of facilities that have costs greater than 1

percent and 3 percent of revenue, and the number of potential facility closures. The next level of control beyond BPT is not feasible for facilities unless the BPT technology is in place, so EPA conservatively assessed both the costs of BAT assuming BPT is in place, called “incremental,” and the costs including

both costs to meet revised BPT and the revised BAT, called “additive” costs of BAT technologies. Table VIII–3 shows the incremental and additive BAT costs for each of the three options and the percentage of annual industry sales these costs comprise.

TABLE VIII–3—TOTAL ANNUALIZED AFTER-TAX COMPLIANCE COSTS FOR BAT

Regulatory option	Incremental BAT		BPT + BAT (additive)	
	(millions, 2022\$)	% Industry annual sales*	(millions, 2022\$)	% Industry annual sales*
Option 1	\$196.39	0.07	\$196.39	0.07
Option 2	576.49	0.22	583.51	0.22
Option 3	962.78	0.36	981.54	0.37

* Based on U.S. Census Annual Survey of Manufacturers, 2021 sales for NAICS 3116.

The difference between the incremental and Additive (BPT+BAT) costs are small, which reflects the relatively small cost of the DAF

technology compared to the more expensive nutrient removal technologies. For assessing economic achievability, EPA is considering the

additive BAT costs. Table VIII–4 shows these full BAT costs broken out by production sub-categories.

TABLE VIII-4—TOTAL ANNUALIZED AFTER-TAX BAT COSTS BY SUB-CATEGORY FOR RULE OPTIONS IN (2022\$)

Production sub-category	Option 1	Option 2	Option 3
Meat First	\$62.47	\$226.76	\$255.60
Meat Further	3.73	3.73	204.91
Poultry First	114.00	324.51	381.48
Poultry Further	6.06	6.06	72.21
Renderer	10.13	22.44	67.32
Total Facility BAT costs	196.39	583.51	981.53

2. BAT Cost-to-Revenue Analyses

Under the Agency's Regulatory Flexibility Act Guidance for assessing impacts of EPA actions on small entities (*Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act*. USEPA 2006), facilities incurring costs below one percent of revenue are unlikely to face economic impacts, while facilities with costs between 1 percent and 3

percent of revenue have a higher chance of facing economic impacts, and facilities incurring costs above three percent of revenue have a still higher probability of economic impact.

Tables VIII-5, VIII-6, and VIII-7 show the number of facilities that have BAT CTR ratios that fall into the three above mentioned categories for each option. To provide context for these numbers, the tables display the percentage of facilities that fall into each group, by all facilities incurring cost and by all

discharging facilities. For all options, the percentage of discharging facilities with a higher probability of financial impacts is less than one. When considering subcategories, all production types have less than one percent of discharging facilities in the higher-probability category, except for poultry slaughter which has 2.1 percent and 2.5 percent of discharging facilities in this category under options 2 and 3 respectively.

TABLE VIII-5—FACILITY-LEVEL BAT AFTER-TAX COMPLIANCE COST-TO-REVENUE ANALYSIS FOR OPTION 1

Sub-categories	Facilities that discharge	Facilities with BAT costs	Number of facilities with a ratio of				Percentage of facilities with BAT costs with ratio of			Percent of all discharging facilities with a ratio of			
			0%	<1%	≥1 to 3%	≥3%	<1%	≥1 to 3%	≥3%	0%	<1%	≥1 to 3%	≥3%
Meat First	556	30	526	30	0	0	100.0	0.0	0.0	94.6	5.4	0.0	0.0
Meat Further	2,770	9	2,761	9	0	0	100.0	0.0	0.0	99.7	0.3	0.0	0.0
Poultry First	238	64	174	61	2	1	95.3	3.1	1.6	73.1	25.6	0.8	0.4
Poultry Further	175	5	170	3	2	0	60.0	40.0	0.0	97.1	1.7	1.1	0.0
Rendering	140	18	122	17	1	0	94.4	5.6	0.0	87.1	12.1	0.7	0.0
Total Number	3,879	126	3,753	120	5	1	95.2	4.0	0.8	96.8	3.1	0.1	0.0

TABLE VIII-6—FACILITY-LEVEL BAT AFTER-TAX COMPLIANCE COST-TO-REVENUE ANALYSIS FOR OPTION 2

Sub-categories	Facilities that discharge	Facilities with BAT costs	Number of facilities with a ratio of				Percentage of facilities with BAT costs with ratio of			Percent of all discharging facilities with a ratio of			
			0%	<1%	≥1 to 3%	≥3%	<1%	≥1 to 3%	≥3%	0%	<1%	≥1 to 3%	≥3%
Meat First	556	85	471	85	0	0	100.0	0.0	0.0	84.7	15.3	0.0	0.0
Meat Further	2,770	9	2,761	9	0	0	100.0	0.0	0.0	99.7	0.3	0.0	0.0
Poultry First	238	142	96	130	7	5	91.5	4.9	3.5	40.3	54.6	2.9	2.1
Poultry Further	175	5	170	3	2	0	60.0	40.0	0.0	97.1	1.7	1.1	0.0
Rendering	140	28	112	26	2	0	92.9	7.1	0.0	80.0	18.6	1.4	0.0
Total Number	3,879	269	3,610	253	11	5	94.1	4.1	1.9	93.1	6.5	0.3	0.1

TABLE VIII-7—FACILITY-LEVEL BAT AFTER-TAX COMPLIANCE COST-TO-REVENUE ANALYSIS FOR OPTION 3

Sub-categories	Facilities that discharge	Facilities with BAT costs	Number of facilities with a ratio of				Percentage of facilities with BAT costs with ratio of			Percent of all discharging facilities with a ratio of			
			0%	<1%	≥1 to 3%	≥3%	<1%	≥1 to 3%	≥3%	0%	<1%	≥1 to 3%	≥3%
Meat First	556	137	419	134	1	2	97.8	0.7	1.5	75.4	24.1	0.2	0.4
Meat Further	2,770	371	2,399	368	1	2	99.2	0.3	0.5	86.6	13.3	0.0	0.1
Poultry First	238	190	48	173	11	6	91.1	5.8	3.2	20.2	72.7	4.6	2.5
Poultry Further	175	100	75	97	2	1	97.0	2.0	1.0	42.9	55.4	1.1	0.6
Rendering	140	115	25	103	12	0	89.6	10.4	0.0	17.9	73.6	8.6	0.0
Total Number	3,879	913	2,966	875	27	11	95.8	3.0	1.2	76.5	22.6	0.7	0.3

The CTR analysis shows that under Option 1 the BAT costs would be less than 1 percent of revenue for 99.9

percent of discharging facilities, and, per RFA guidance, would be unlikely to face economic impacts. Therefore, EPA

proposes to find that Option 1 is economically achievable for the industry as a whole. Given that the BAT

CTR results for options 2 and 3 show that 99.6 percent and 99.1 percent of discharging facilities would have costs less than 1 percent of revenues, respectively, EPA solicits comment on whether these options would also be economically achievable.

D. Other Economic Analyses

Sections A, B, and C above address the CWA requirements for determining BPT, BCT, and BAT. Economic effects of each of these technology levels was considered in isolation. This section presents the aggregate costs and impacts of each of the three options on regulated

facilities. These analyses cover both facility-level and firm-level effects, employment effects, and market-level effects.

1. Facility Closure Analysis

Estimating the potential closures of existing facilities is the traditional way EPA assesses economic achievability under the CWA. This analysis is based first on financial data reported in the detailed questionnaire, and then extrapolated to the larger universe of facilities based on relevant facility financial and production characteristics.

Under the preferred Option 1, EPA estimated that 16 facilities would potentially close. Under Option 2, EPA estimated that 22 facilities would potentially close. Under Option 3, EPA estimated that 53 facilities would potentially close. This corresponds respectively to 0.3 percent, 0.4 percent, and 1.0 percent of all facilities (including zero discharge facilities). Chapter 5 in the RIA provides more detailed results for the three regulatory options EPA analyzed. Table VIII–8 presents the results of the facility closure analysis.

TABLE VIII–8—POSSIBLE FACILITY CLOSURE ESTIMATES

	Option 1	Option 2	Option 3
Number of Possible Facility Closures	16 (0.4%)	22 (0.6%)	53 (1.0%)
Number of Facilities with Costs	845	845	1,620
Number of Discharging Facilities	3,879	3,879	3,879
% of Facilities with Costs	1.9%	2.6%	3.3%

Rather than close the facility, some firms may decide to reduce facility production levels to be below the production size thresholds included in each of the options. Although they would be avoiding compliance costs, they would incur the opportunity costs of forgone net revenues. Firms may choose this approach if it is seen as less economically burdensome than the regulatory cost of compliance. This approach is not costed because EPA assumes that it would only be chosen by the firm if it is less costly. However, reducing production to avoid compliance, if chosen by enough facilities could have a measurable effect on industry production. This potential change in quantity produced is different than the quantity effects discussed in the following market analysis. The potential costs of regulatory compliance could also affect future decisions to expand production at those existing facilities that currently produce below the threshold production levels that are part of each of the regulatory options.

2. Facility and Firm Level Cost-to-Revenue Analyses

EPA conducted a screening-level analysis of each regulatory option's potential impact on discharging MPP facilities and parent entities based on cost-to-revenue ratios. For each of the two levels of analysis (facility and parent entity), the Agency assumed, for analytic convenience and as a worst-case scenario, that none of the compliance costs would be passed on to retailers or back to producers (farmers) and would instead be absorbed by the processing facilities and their parent entities. This assumption overstates the impacts of projected compliance expenditures on a facility since it is more realistic to assume that a portion of these costs in most all cases may be passed up and down the supply chain resulting in small incremental cost increases to producers and consumers. It is, however, a reasonable assumption for a screening-level estimate of the potential cost impacts.

(a) Facility-Level Cost-to-Revenue Analysis

EPA used reported revenue estimates in the detailed surveys responses. EPA estimated revenue using reported annual production multiplied by the average revenue per unit of production from the detailed questionnaire for facilities producing the same output type, e.g., slaughtered poultry. Otherwise, EPA used external revenue estimates from proprietary sources such as Hoovers D&B where available or used the mid-point of the production level category assigned to the facility in the FSIS database to first estimate their production level, and then multiplied this by survey average revenue per unit of production, mentioned previously. EPA then calculated the change in the annualized after-tax costs of the three regulatory options presented in Tables VIII–6, 7 and 8 of this preamble as a percent of baseline annual revenues. See Chapter 4 of the RIA for a more detailed discussion of the methodology used for the facility-level cost-to-revenue analysis. Table VIII–9 presents the facility-level results for each of the three options.

TABLE VIII–9—FACILITY-LEVEL AFTER-TAX COMPLIANCE COST-TO-REVENUE ANALYSIS RESULTS BY REGULATORY OPTION

Rule option	Total dischargers	Facilities with costs	Number of facilities with a ratio of				Percentage of facilities with costs with ratio of			Percent of all dischargers with a ratio of			
			0%	<1%	≥1 and 3%	≥3%	<1%	≥1 and 3%	≥3%	0%	<1%	≥1 and 3%	≥3%
1	3,879	845	3,033	838	5	2	99	0.6	0.2	78.2	21.6	0.1	0.1
2	3,879	845	3,033	828	12	5	98	1.4	0.6	78.2	21.4	0.3	0.1
3	3,879	1,620	2,257	1,576	31	13	97	1.9	0.8	58.2	40.7	0.8	0.3

Under the preferred Option 1, EPA estimated that seven facilities (0.18 percent of total dischargers) would incur incremental costs greater than or equal to one percent of revenue, including two facilities that have costs greater than or equal to three percent of revenue, and an additional 838 facilities would incur costs that are less than one percent of revenue. Under Option 2, EPA estimated that 17 (0.44 percent of total dischargers) facilities would incur incremental costs greater than or equal to one percent of revenue, including five facilities that have costs greater than or equal to three percent of revenue, and an additional 828 facilities would incur costs that are less than one percent of revenue. Under Option 3, EPA estimated that 44 facilities (1.13 percent of total dischargers) would incur incremental costs greater than or equal to 1 percent of revenue, including 13 facilities that have costs greater than or equal to three percent of revenue, and

an additional 1,578 facilities would incur costs that are less than 1 percent of revenue. For each of these three options, the remaining discharging facilities would incur no costs. Chapter 4 in the RIA provides more detailed results for the three regulatory options EPA analyzed.

(b) Firm-Level Cost-to-Revenue Analysis

EPA also assessed the economic impact of the regulatory options at the parent entity level. The screening-level cost-to-revenue analysis at the parent entity level provides insight on the impact on those entities that own one or more MPP facilities. In this analysis, the domestic parent entity associated with a given facility is defined as the entity with the largest ownership share in the facility. For each parent entity or firm, EPA compared the incremental change in the total annualized after-tax costs and the total revenue for the entity to baseline (see Chapter 4 of the RIA for details). EPA based ownership and

annual revenues directly on questionnaire responses for those facilities that completed detailed questionnaires. Ownership was also based on questionnaire responses. Revenue information, however, was based on external sources of financial information, mentioned above. Where questionnaire responses were not available, ownership and firm revenue information were based on matching these facilities with firms contained in the external firm data (Hoovers D&B) that have reported business activity under NAICS category 3116. For facilities where a match could not be made, facilities were assumed to be owned by a firm that owned no other businesses and has no other sources of revenue. This assumption likely leads to an overestimation of the cost-to revenue ratio for many of these entities that may also have additional sources of revenue. Table VIII–10 provides firm-level cost-to-revenue results.

TABLE VIII–10—FIRM-LEVEL CTR SCREENING ANALYSIS RESULTS

Rule option	Firms with MPP facilities	Number firms with a ratio of				Percent of firms with a ratio of			
		0% ^a	>0 and <1%	≥1 and <3%	≥3%	0% ^a	>0 and <1%	≥1 and <3%	≥3%
1	4,127	3,730	394	3	0	90	10	0.1	0.0
2	4,127	3,730	393	3	1	90	10	0.1	0.0
3	4,127	3,129	980	14	4	76	24	0.4	0.1

^a These firms own only facilities that already meet discharge requirements for the wastestreams addressed by a given regulatory option and are therefore not estimated to incur any compliance technology costs.

Like the facility-level analysis above, cost-to-revenue ratios provide screening-level indicators of potential economic impacts, this time to the owning entities; higher ratios suggest a higher probability of economic impacts. EPA estimates that the number of entities owning existing MPP facilities to be 4,127 firms. Under the proposed rule Option 1, there would be 3,730 firms with no costs and 394 with costs less than one percent of revenue. EPA estimates that three firms would incur incremental costs greater than or equal to one percent of revenue and less than three percent of revenue. No firms are expected to incur costs greater than or equal to three percent of revenue. Under Option 2, there would be 3,730 firms with no costs and 393 with costs less

than 1 percent of revenue. EPA estimates that four firms would incur incremental costs greater than or equal to 1 percent of revenue and only one of these would incur costs greater than or equal to 3 percent of revenue. Under Option 3, there would be 3,129 firms with no costs and 980 with costs less than 1 percent of revenue. EPA estimates that 18 firms would incur incremental costs greater than or equal to 1 percent of revenue and, of these, four would incur costs greater than or equal to 3 percent of revenue. Chapter 4 in the RIA provides more detailed results for the three regulatory options EPA analyzed.

(c) Small Business Impacts

Under the Regulatory Flexibility Act (RFA) and Small Business Regulatory

Enforcement Fairness Act (SBREFA), EPA is required to estimate the potential economic impacts of the rule on small businesses. The definition of small business varies by NAICS categories and for this industrial category the definition is based on employment levels provided in Table VIII–11 below. Firm employment levels are based on questionnaire responses when available. For non-respondents, firm employment estimates from Hoovers D&B are used if the firm was matched to one or more facilities. For remaining firms USDA facility inspection data employment categories for facilities are used to estimate if the owners are a small business. For more information on this approach see the SBREFA screening analysis section of the RIA.

TABLE VIII–11—SMALL BUSINESS ADMINISTRATION SMALL BUSINESS SIZE STANDARDS FOR MEAT AND POULTRY PROCESSING INDUSTRY

NAICS code	NAICS industry description	Size standard in employee #s
311611	Animal (except Poultry) Slaughtering	1,150
311612	Meat Processed from Carcasses	1,000
311613	Rendering and Meat Byproduct Processing	750

TABLE VIII–11—SMALL BUSINESS ADMINISTRATION SMALL BUSINESS SIZE STANDARDS FOR MEAT AND POULTRY PROCESSING INDUSTRY—Continued

NAICS code	NAICS industry description	Size standard in employee #s
311615	Poultry Processing	1,250

For each of the three options, EPA estimated the number of small parent entities that incur annual compliance costs that fall into one of three categories: less than 1 percent of annual revenue; between 1 percent and less than 3 percent of annual revenue; and 3 percent or more of annual revenue.

Table VIII–12 presents the results of the CTR test for all small entities that own MPP dischargers. Table VIII–13 shows aggregate revenue and cost for small firms by process type. EPA conservatively assumes that entities with an unidentified size are large. While this assumption potentially

reduces the number of identified small entities, it provides a conservative estimate of the percentage of small entities with impacts, since none of the entities with an unidentified size have a CTR ratio greater than one percent under any of the regulatory options.

TABLE VIII–12—SMALL FIRM-LEVEL CTR SCREENING ANALYSIS RESULTS

Entity type	Total # of small firms	Number small firms with a ratio of				Percent of small firms with a ratio of			
		0% ^a	>0 and <1%	≥1 and <3%	≥3%	0% ^a	>0 and <1%	≥1 and <3%	≥3%
Option 1	3,233	3,137	95	1	0	97	3	0.0	0.0
Option 2	3,233	3,137	94	1	1	97	3	0.0	0.0
Option 3	3,233	2,970	248	11	4	92	8	0.0	0.0

^a These entities own only facilities that already meet discharge requirements for the wastestreams addressed by a given regulatory option and are therefore not estimated to incur any compliance technology costs.

TABLE VIII–13—AGGREGATE REVENUE AND COSTS FOR SMALL FIRMS BY PROCESS TYPE

Process type ^a	Total # small firms with dischargers	Total # small firms with costs	Aggregate revenue (millions, 2022\$)	Aggregate costs (millions, 2022\$)
Option 1				
Meat first	372	22	\$83,328	\$4.5
Meat further	1,799	31	61,517	0.1
Poultry first	55	16	20,008	13.6
Poultry further	47	20	9,363	3.0
Render	23	7	6,019	1.0
Total	2,296	96	180,235	22.3
Option 2				
Meat first	372	22	83,328	32.7
Meat further	1,799	31	61,517	0.1
Poultry first	55	16	20,008	41.6
Poultry further	47	20	9,363	3.0
Render	23	7	6,019	1.0
Total	2,296	96	180,235	78.5
Option 3				
Meat first	372	54	97,768	44.8
Meat further	1,799	149	151,897	38.8
Poultry first	55	25	20,627	63.1
Poultry further	47	25	9,521	11.9
Render	23	9	6,029	10.0
Total	2,296	262	285,841	168.6

^a Process type assigned to firms based on highest production.

The results from the Small Firm-Level CTR Screening Analysis demonstrate that there is not a significant financial burden on a substantial number of small

firms that own MPP facilities. Likewise, the results also show that small firms do not bear a disproportionate financial burden relative to large firms. These

results demonstrate that the use of facility production size thresholds for each of the three options ensures that

the primary economic burden of the rule is born by large facilities and firms.

3. Market Effects

The analyses thus far have focused either at the individual facility or firm level but have not directly addressed the cumulative effects of the rule options. EPA examined the effects of the regulatory options on the national markets for beef, pork, chicken, and turkey. EPA developed linear domestic and trade demand and supply equations

for each meat product based on price elasticities from USDA data and other published sources. To estimate the impacts of the regulatory options, the domestic supply curves were adjusted to incorporate the after-tax annualized compliance costs incurred by producers in each meat product market, causing a shift in each supply curve and a decrease in domestic supply. After estimating the post-regulatory equilibrium for each meat product market, market-level impacts on prices

and quantities were estimated. Tables VIII–14 and VIII–15 provide the percentage change in quantity and prices respectively for each meat product and rule option combination. The overall effects on meat product supplies and prices are sufficiently small under all three options that they are unlikely to have a noticeable effect on producer or consumer behavior. For more information on the market analysis methodology and results see Chapter 6 of the RIA.

TABLE VIII–14—POST-COMPLIANCE DECREASE IN MEAT MARKET SUPPLIES BY RULE OPTION

Meat product	% Change total supply		
	Option 1	Option 2	Option 3
Beef	–0.006	–0.018	–0.027
Pork	–0.017	–0.051	–0.073
Chicken	–0.014	–0.028	–0.086
Turkey	–0.010	–0.021	–0.063
Total	–0.012	–0.031	–0.065

TABLE VIII–15—POST-COMPLIANCE INCREASE IN MEAT MARKET PRICES BY RULE OPTION

Meat product	% Change in prices		
	Option 1	Option 2	Option 3
Beef	0.01	0.02	0.03
Pork	0.01	0.03	0.05
Chicken	0.01	0.02	0.05
Turkey	0.00	0.01	0.02

4. Employment Effects

In addition to addressing the costs and impacts of the regulatory options, EPA estimated the potential impacts of this rulemaking on employment. Employment effects can be both positive and negative as well as temporary or permanent. The employment analyses performed for the proposed rule measure labor changes in terms of full time equivalent (FTE) labor inputs. EPA measures the short-term employment effects directly due to estimated closures as well as the long-term employment effects from changes in production levels at the new market equilibrium. Employment loss due to facility closures is considered transitory as some of the production that occurred at these facilities will quickly move to

other facilities with spare capacity. Eventually new and expanding existing facilities will take on much of the remaining production that would have occurred at the closed facilities. As these shifts in production occur so too will employment opportunities.

Closures are not the only rule impact affecting employment. As just described in the preceding market analysis section, overall production is likely to go down slightly once the markets for meat products reach a new equilibrium of supply and demand. Lower production levels would likely result in long-term job losses. The number of long-term possible job losses across the whole industry due to decreased production are 65, 161, and 339 for options 1, 2, and 3 respectively. Relative to the total industry employment levels,

these job losses translate to 0.0002 percent, 0.001 percent, and 0.0032 percent, respectively. The annual operation and maintenance costs for the new treatment technologies include labor costs, based on typical dollar per hour wage rates for the industry. These labor hours can be used to estimate the additional employees necessary to operate and maintain the treatment technologies. These new jobs more than offset those lost due to lower production levels for all three options, resulting in a net gain of 166, 669, and 1,603 jobs respectively. Table VIII–16 presents the possible short-term and long-term employment impacts of the three regulatory options being considered. For more on the employment analyses see Chapter 7 of the RIA.

TABLE VIII–16—POSSIBLE EMPLOYMENT IMPACTS ESTIMATED BY REGULATORY OPTION
[FTE*]

Employment impact category	Option 1	Option 2	Option 3
Short-term Employment Losses due to Possible Closures	–16,917	–17,461	–20,205
Short-term losses as % of total employment	–0.03%	–0.03%	–0.04%
Long-term Employment Losses due to Decreased Production	–65	–161	–339
Long-run/labor to Operate Treatment Technology	166	669	1,942

TABLE VIII–16—POSSIBLE EMPLOYMENT IMPACTS ESTIMATED BY REGULATORY OPTION—Continued
[FTE*]

Employment impact category	Option 1	Option 2	Option 3
Net Long-term Changes in Employment	101	508	1,603
Total long-run as % of total employment	0.0002%	0.001%	0.0032%

*One FTE equivalent to 2,080 hrs/yr.

5. Chlorides Removal Costs and Impacts

EPA is taking comment on the inclusion of chlorides removal limits. EPA is considering establishing a zero discharge of pollutants requirement for high chloride waste streams for facilities producing more than 5 million pounds per year with high chlorides processes. The technology costs considered for this requirement involve segregating the high chloride waste streams from other process wastewater and managing these high chloride streams through sidestream evaporation. Details on the costs and economic impacts of the chlorides removal provision can be found in the TDD and the RIA, respectively.

IX. Pollutant Loadings

A. Estimation of Existing Industry Pollutant Discharges

In developing ELGs, the CWA calls for EPA to identify the effluent reduction from each level of control (CWA section 304(b)(2)(A)(BAT), (b)(4)(A)(BCT), and (b)(1)(A)(BPT). 33 U.S.C. 1314(b)(2)(A)(BAT); 1314(b)(4)(A)(BCT), and 1314(b)(1)(A)(BPT)). To estimate effluent reduction, or removals, EPA first estimates on an annual, per facility basis, the pollutant load discharged today. EPA then estimates pollutant discharge loads and removals that would result from the proposed regulatory options. As described in section VII, the three proposed regulatory options apply different combinations of wastewater treatment technology to specific sets of facilities based on facility production size thresholds. EPA estimates pollutant discharge loads and removals for two MPP waste streams: (1) MPP process wastewater and (2) high chlorides wastewater (as a segregated waste stream).

Supporting analyses and datasets for the MPP loadings calculations include the following:

- **MPP Industry Profile**—identifies the MPP facilities impacted by the proposed rule and key inputs for the loadings/removal analysis including processing type, discharge status (*i.e.*, direct, indirect, zero discharge), and discharge flow rate for both process wastewater and high chlorides

wastewater (*Meat and Poultry Products (MPP) Profile Methodology Memorandum*. USEPA. DCN MP00306).

- **Treatment in Place (TIP) Analysis**—identifies existing wastewater treatment based on facility-specific data, where possible, and assigns existing wastewater treatment to facilities without data based on MPP Questionnaire response data and engineering best judgment (*Treatment in Place (TIP) Analysis for the Meat and Poultry Products (MPP) Proposed Rule*. USEPA. DCN MP00191).

- **Pollutants of Concern (POC) Analysis**—identifies the pollutants present in untreated MPP process wastewater at treatable levels (*Pollutants of Concern (POC) Analysis for the Meat and Poultry Products (MPP) Proposed Rule*. USEPA. DCN MP00190).

- **Analytical Database**—compilation of all wastewater sampling from publicly available sources or collected as part of the proposed rule. The database includes facility-specific wastewater monitoring data from the MPP Questionnaire, EPA sampling, 2021 Discharge Monitoring Report (DMR) data for select MPP facilities, responses to EPA's CWA section 308 data requests, and any other data on MPP process wastewater provided to EPA (*e.g.*, from site visits or other discussions with industry) (*Analytical Database Methodology for the Meat and Poultry Products Proposed Rulemaking*. USEPA. DCN MP00303).

For the MPP process waste stream, pollutant loads and removals were estimated for the wastewater treatment technology systems described in the regulatory options: phosphorus removal by chemical precipitation for direct and indirect dischargers, nitrogen removal by biological treatment to achieve full denitrification for direct and indirect dischargers, select conventional pollutant (*e.g.*, BOD, TSS, Oil & Grease) removal by screening and dissolved air flotation (DAF) for indirect dischargers, and high chlorides sidestream evaporation for direct and indirect dischargers. EPA estimated facility pollutant discharge loads and removals that would result from these four technology systems.

For the MPP high chlorides waste stream, pollutant loads and removals

were estimated based on evaporation technology, and this was applied to both direct and indirect facilities with a high chlorides waste stream.

Baseline pollutant loadings and removals were calculated using the facility flows and the effluent pollutant concentrations associated with the TIP analysis. Using data from the MPP Questionnaire and existing data, EPA identified facility-specific details on facility operations (type of processing), discharge status, and existing TIP. If no relevant treatment is currently in place at a facility, the raw process wastewater concentrations were used.

Effluent loads for each facility were calculated for the POCs for the treatment system considered under the regulatory options by multiplying the pollutant concentration associated with the wastewater treatment technology by the wastewater flow rate. For indirect dischargers, (*i.e.*, discharges to a POTW), EPA accounted for pollutant removal that occurs at the POTW to calculate the baseline and regulatory option loadings. Indirect discharge loads were estimated at the POTW effluent (*i.e.*, following treatment at the POTW to account for pollutant removal that occurs at the POTW) to represent the pollutant load to the receiving water. The pollutant load removals were calculated as the difference between the baseline load and the load resulting with the treatment technology in place.

B. Summary of Incremental Changes of Pollutant Loadings and Removals From Regulatory Options

Table IX–1 summarizes the net reduction in annual pollutant loadings, compared to baseline, associated with each regulatory option. Removals for total nitrogen, total phosphorus, chlorides the conventional pollutants BOD, TSS, oil & grease are shown here. Additional pollutants are also removed by the technologies. More information on the pollutant loads is available in the TDD. Compared to the existing rule baseline, all proposed regulatory options result in decreased pollutant loadings to surface waters.

TABLE IX–1—NET REDUCTIONS IN ANNUAL POLLUTANT LOADINGS FOR KEY POLLUTANTS

Regulatory option	Reductions ^c in annual pollutant loadings million lb/yr (% reduction)			
	Nitrogen	Phosphorus	Conventional ^a	Chlorides ^b
1	9 (10%)	8 (37%)	80 (31%)	477 (98%)
2	45 (49%)	16 (78%)	167 (64%)	477 (98%)
3	76 (83%)	20 (94%)	226 (87%)	477 (98%)

^a Conventional Pollutant Removal includes BOD, O&G, TSS.
^b Chlorides has same removal under each option.
^c Pollutant reductions include removals by POTWs.

X. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, CWA sections 304(b) and 306 require EPA to consider non-water quality environmental impacts (including energy requirements) associated with ELGs. To consider these factors, EPA considered the potential impact of the technology basis on energy consumption, air pollution, and solid waste generation. As shown below, EPA anticipates that all of the proposed rule options would produce minimal non-water quality environmental impacts and as such proposes that they are acceptable. Additional information about the analysis of these non-water quality impacts is contained in the TDD.

A. Energy Requirements

MPP Facilities use energy when operating processing equipment, operating the facility buildings, and operating wastewater treatment systems. For this proposal, EPA considers whether there would be an associated change in the incremental energy requirements compared to baseline. Energy requirements vary depending on the regulatory option evaluated and the current operations of the facility. Therefore, as applicable, EPA estimates the increase in energy usage in (megawatt hours, MWh) for equipment added to the plant systems or in consumed fuel (gallons). EPA sums the estimated increase to calculate the net change in energy requirements from baseline for the regulatory options. EPA estimates the amount of energy needed to operate the additional

wastewater treatment systems based on conventional pollutant (e.g., BOD, TSS, Oil & Grease) removal by screening and DAF, phosphorus removal by chemical precipitation, nitrogen removal by biological treatment to achieve full denitrification, and high chlorides removal by sidestream evaporation. Table X–1 of this preamble shows the net change in annual electrical energy usage associated with the regulatory options compared to baseline. The table values assume a zero net increase for conventional pollutant treatment of indirect dischargers, as the burden of treatment is shifted from the POTW to the MPP facility. Table X–1 also does not include the additional energy demand for treatment of high chlorides wastewater, which is estimated to be an additional 349,000 MWh per year.

TABLE X–1—ESTIMATED INCREMENTAL CHANGE IN ENERGY REQUIREMENTS ASSOCIATED WITH REGULATORY OPTIONS COMPARED TO BASELINE

Non-water quality environmental impact	Energy use associated with regulatory options		
	Option 1	Option 2	Option 3
Increase in Electrical Energy usage (MWh)	104,208	386,448	557,538
Increase as % of total US electric power generated in 2021 ³⁵	0.0000025%	0.0000094%	0.0000136%

By comparison, electric power generation facilities generated 4,108 billion MWh of electric power in the United States in 2021 (EIA, 2021).²² All of the proposed options would result in a negligible increase in the amount of energy generation required nationwide.

B. Air Pollution

EPA proposes to find that wastewater treatment processes evaluated in this proposed rule would not generate significant air emissions above the current emissions, either directly from the facility or indirectly from the facilities that provide energy to MPP facilities. Possible non-odorous gases that may be emitted from these

processes include nitrogen and carbon dioxide. EPA expects a slight increase in nitrogen gas generated over the current baseline because it would be formed during the denitrification process and would escape to the atmosphere. Since nitrogen comprises over 78 percent of the Earth’s atmosphere and is not considered a greenhouse gas, the additional generation is not considered to pose an environmental impact. Carbon dioxide will be released when BOD is oxidized by oxygen-containing compounds. However, the BOD being treated would generally not increase but rather just the location of treatment would change (POTW vs MPP facility). Therefore, there would generally be no significant incremental increase in carbon dioxide over current treatment levels.

Odors are the only significant air pollution problem associated with the treatment of MPP wastewaters and generally are associated with anaerobic conditions. Thus, flow equalization basins, DAF units, and anaerobic lagoons are possible sources of malodors, especially for indirect dischargers who may not currently do pretreatment prior to discharging to a POTW. Potential odorous substances associated with MPP wastewater include ammonia, hydrogen sulfide, and organic compounds. Ammonia in MPP wastewaters is typically due to breakdown of more complex substances and can be released under certain circumstances. However, aerobic nitrifying conditions will favor keeping ammonia in solution as it is converted to nitrate, meaning that odors will

²² <https://www.eia.gov/electricity/annual/archive/2021/pdf/epa.pdf>.

generally be suppressed. In addition, maintenance of pH around neutral conditions will disfavor stripping ammonia, leaving it in the wastewater to be oxidized or assimilated. Furthermore, denitrification processes will favor additional conversion of ammonia. Thus, any incremental ammonia generation would be minimal. The chemical precipitation process to remove phosphorus is not expected to generate any additional odors.

Hydrogen sulfide can be formed under anaerobic and anoxic conditions such as in the denitrification reactors. Hydrogen sulfide generation requires the presence of sulfate in the wastewater, which is typically low in MPP wastes. (In most cases the source of sulfates in MPP wastewater is the source water supply.) In addition, the formation of sulfide is less favored than the reduction of nitrate to nitrogen, meaning that under most circumstances, sulfide would not be formed to a greater degree than is currently the case, especially if the facility is well-managed.

Volatile odorous organic compounds can be generated in anaerobic lagoons. If specific facilities have odor difficulties, covers over the lagoons can be used to capture odorous substances

that are then subsequently destroyed by some oxidation or combustion process. Some facilities capture anaerobically generated methane for fuel; if that gas stream must be scrubbed before use, the waste would be recycled to the wastewater treatment plant, resulting in no net environmental impact. Such oxidation and combustion processes would potentially result in additional carbon dioxide generation; however, that generation constitutes minimal incremental generation, since the organic substances involved would have gone through oxidation naturally. Typically, odorous organic compounds are well-destroyed in aerobic systems. Overall, the incremental change in odor problems associated with this proposed regulation are expected to be small. Odor problems usually are significant only when the sulfur content of MPP wastewaters is high, especially when treatment facilities are not well managed. Generally, MPP wastewater treatment facilities using anaerobic processes for treating wastewater with a low sulfur concentration have few odor problems. At such facilities, maintaining a naturally occurring layer of floating solids in anaerobic contact basins and lagoons generally minimizes odors. Thus, the technology options

should not increase emissions of odorous compounds from well-managed MPP wastewater treatment facilities. If a facility uses nitrification to meet the ammonia limitations, then any ammonia odors would be minimal because the process keeps the ammonia in solution as it is converted to nitrate. However, using anaerobic treatment for initial BOD reduction before aerobic treatment would increase emissions of methane and volatile organic compounds, but the increases should be negligible given today's extensive use of lagoons and other anaerobic processes in MPP wastewater treatment. In addition, covering anaerobic lagoons and flaring the gas captured can reduce these emissions. If the volume of captured gas is sufficient, it can be used as a fuel to produce process heat or electricity. EPA observed facilities capturing gas for use as fuel during site visits.

C. Solid Waste Generation

EPA estimates that compliance with the proposed rule would not significantly increase the amount of wastewater treatment sludge generated for the meat and poultry processing industry. Table X–2 estimates the incremental sludge production increases for the proposed rule.

TABLE X–2—ESTIMATE OF INCREMENTAL SLUDGE PRODUCTION INCREASES

Non-water quality environmental impact	Incremental sludge production associated with regulatory options		
	Option 1	Option 2	Option 3
Sludge Production (tons/year)	384,359	995,804	1,213,782

The estimates of sludge production in Table X–2 are based on the concentrations of BOD entering the biological part of the treatment system after pretreatment (*i.e.*, screening, DAF). The sludge yield coefficient for the denitrification process is lower than the coefficient for the aerobic process; therefore, the amount of sludge generated per BOD unit would be lower for the denitrification part than the nitrification part.

The values presented in Table X–2 represent the total sludge production for the modeled unit processes. The values in Table X–2 assume a zero net increase in solids production from conventional pollutant treatment at affected indirect dischargers, as the burden of treatment shifts from the POTW to the MPP facility. Additional solids are expected to be generated from chemical phosphorus removal as a result of this proposed rule. Generally, a facility will either combine the solids generated

from this process with other process solids, or it may elect to process and resell the reclaimed phosphorus on the private market. If a facility selects an aluminum based chemical process for precipitation, this may limit the ability of the solids to be land applied. EPA also expects that more emphasis on pollution prevention (*e.g.*, by increased segregation of waste) could further reduce sludge generation, though it is not expected to yield significant reductions. Examples of such pollution prevention practices include segregation of high chlorides wastewaters from the main treatment stream, allowing the solids to be extracted more economically from the waste steam and reducing the overall volume of sludge.

XI. Environmental Assessment

A. Introduction

The environmental assessment for the proposed rule reviewed currently available literature on the documented

environmental and human health impacts of MPP wastewater discharges and conducted modeling to estimate impacts of MPP discharge to surface waters and downstream environments at both localized and regional scales. EPA's review of the scientific literature documents cases of the extensive impacts of MPP wastewater discharges on human health and the environment and a full description of EPA's modeling methodology and results are provided in the Environmental Assessment document. EPA modeled the impacts of MPP discharges at baseline conditions (pre-rule conditions) and the improvements that may result if the proposed options were implemented.

It is well established that effluent guidelines are not required to consider the impacts on receiving water quality *See, e.g., Southwestern Electrical Power Co. v. United States*, 920 F.3d 999, 1005 (5th Cir. 2019). (The CWA "requires ELGs to be based on technological

feasibility rather than on water quality,” citing *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 130–31, (1977)). That is, the Administrator must “require industry, regardless of a discharge’s effect on water quality, to employ defined levels of technology to meet effluent limitations” *Id.*, citing *Am. Petroleum Inst. v. EPA*, 661 F.2d 240, 343–44 (5th Cir. 1981). ELCs are “technology-based rather than harm-based” insofar as they “reflect the capabilities of available pollution control technologies to prevent or limit different discharges rather than the impact that those discharges have on the waters.” *Id.*, citing *Tex. Oil and Gas v. EPA*, 161 F.3d 923, 927 (5th Cir. 1998). Nevertheless, there is great public interest in understanding the benefits of EPA’s effluent guidelines and E.O. 12866, 12898, and 14096 require an assessment of the environmental benefits of Federal rulemakings.

B. Summary of Environmental and Human Health Impacts

As discussed in the Environmental Assessment document, current scientific literature as well as EPA’s own data indicated that MPP wastewaters contain large amounts of a wide range of harmful pollutants, which contribute to extensive environmental impacts and can have detrimental effects on human health through multiple exposure routes.

Nutrient overloading of surface waters is a national issue, and this concern extends to surface waters receiving MPP wastewater, with 36 percent and 37 percent of catchments downstream²³ of direct and indirect dischargers, respectively, are impaired for nutrients and/or oxygen demand. Excess nutrients in aquatic environments, or eutrophication, is the most documented impact and consequentially can result in the accelerated growth of bacteria and/or algae, reducing available dissolved oxygen (DO) and limiting the ability of the waterbody to support aquatic life. Examples include biodiversity loss, impacts to fish development and reproduction, as well as fish kills from hypoxic, or deoxygenated, waters. Low DO levels can also release toxic metals from sediments, further contaminating aquatic habitat (Li et al. 2013).²⁴ Often spurred by eutrophication, some algal blooms release toxins into the water, which can result in sickness and/or

death in exposed terrestrial animals and people.

Excess nutrients can impact human health through several pathways, both direct and indirect. High nitrate concentrations in drinking water can lead to infant methemoglobinemia (blue baby syndrome), colorectal cancer, thyroid disease, and neural tube defects (USEPA. 2000. EPA–822–B–00–002) (Ward et al. 2018).²⁵ High nutrient levels in drinking water sources can also lead to objectionable tastes and odors, and potentially increase drinking water treatment costs to remove nitrates. In terms of indirect health impacts, the growth of harmful algal and bacteria due to eutrophication can potentially result in the contamination of shellfish with fecal coliform bacteria or algal toxins. Adverse health impacts from the consumption of contaminated shellfish can include paralytic, diarrhetic, amnesic, and neurotoxic shellfish poisoning (USEPA. 2015. EPA–820R15102) (Hoagland et al. 2002).²⁶

Drinking water quality can be impacted by several other pollutants present in MPP wastewater in addition to nutrients. Consumption of water contaminated with pathogenic bacteria can pose serious health risks, ranging from gastrointestinal illness like diarrhea, vomiting, and fever, to sepsis and toxic shock syndrome in extreme cases (Baskin-Graves et al. 2019).²⁷ High levels of suspended solids can harbor bacteria in drinking water sources, making treatment more difficult. Arsenic, which is present in some sanitizers, may be introduced to MPP wastewater through contact with offal or during nightly equipment cleaning operations. Arsenic is both a carcinogen and a toxin and can have reproductive impacts if ingested via drinking water (Witkowska et al. 2021).²⁸ Some heavy metals have been detected in MPP wastewater, which if then found at

sufficient concentrations in drinking water can pose health risks.

Pollutants found in MPP wastewater also compromise aquatic and terrestrial biota survival and reproduction. For example, biodiversity loss can occur when aquatic organisms are exposed to elevated levels of chlorides, killing or impairing freshwater species, and allowing for the proliferation of more salt tolerant organisms (Weber-Scannell and Duffy. 2007).²⁹ Suspended solids increase turbidity, blocking light infiltration of surface waters and limiting primary production, thereby impacting food availability for higher trophic levels. Some metals common in MPP wastewater streams, such as zinc and copper, have been identified as toxic to crops when biosolids generated from MPP wastewater treatment were used as a soil supplement, and these metals can similarly limit primary production at low concentrations (Gerber et al. 2017).³⁰ (Amoatey and Baawain. 2019).³¹

C. Environmental Assessment Methodology

The environmental assessment for the proposed rule reviewed currently available literature on the documented environmental and human health impacts of MPP wastewater discharges and conducts modeling to estimate the impacts of these discharge to surface waters and downstream environments at both localized and regional scales. EPA modeled the water quality impacts of MPP discharges at baseline conditions (pre-rule conditions) and the improvements that would likely result after the implementation of the rule in both a set of smaller case study watersheds as well as in larger watersheds that represent diverse land areas across the continental U.S.

To evaluate the potential water quality impacts of the proposed rule, EPA developed models of both the selected case study watersheds and larger, watersheds using the Hydrologic and Water Quality System (HAWQS) 2.0 and the Soil and Water Assessment Tool

²⁵ Ward, M.H., Jones, R.R., Brender, J.D., de Kok, T.M., Weyer, P.J., Nolan, B.T., van Breda, S.G. 2018. *Drinking Water Nitrate and Human Health: An Updated Review*. International Journal of Environmental Research and Public Health, 15(7), 1557. doi:10.3390/ijerph15071557.

²⁶ Hoagland, P., Anderson, D.M., Kaoru, Y., & White, A.W. 2002. *The Economic Effects of Harmful Algal Blooms in the United States: Estimates, Assessment Issues, and Information Needs*. Estuaries, 25, 819–837.

²⁷ Baskin-Graves, L., Mullen, H., Aber, A., Sinisterra, J., Ayub, K., Amaya-Fuentes, R., & Wilson, S. 2019. *Rapid Health Impact Assessment of a Proposed Poultry Processing Plant in Millsboro, Delaware*. International Journal of Environmental Research and Public Health, 16(18). doi:10.3390/ijerph16183429.

²⁸ Witkowska, D., Słowik, J., & Chilicka, K. 2021. *Heavy Metals and Human Health: Possible Exposure Pathways and the Competition for Protein Binding Sites*. Molecules, 26(19). doi:10.3390/molecules2619060.

²⁹ Weber-Scannell, P., & Duffy, L. 2007. *Effects of Total Dissolved Solids on Aquatic Organisms: A Review of Literature and Recommendation for Salmonid Species*. American Journal of Environmental Sciences, 3. doi:10.3844/ajessp.2007.1.6.

³⁰ Gerber, M.D., Lucia, T., Correa, L., Neto, J.E.P., & Correa, E. K. 2017. *Phytotoxicity of effluents from swine slaughterhouses using lettuce and cucumber seeds as bioindicators*. Science of The Total Environment, 592, 86–90. doi: <https://doi.org/10.1016/j.scitotenv.2017.03.075>.

³¹ Amoatey, P., & Baawain, M.S. 2019. *Effects of pollution on freshwater aquatic organisms*. Water Environment Research, 91(10), 1272–1287. doi: <https://doi.org/10.1002/wer.1221>.

²³ Within 25 river miles downstream.

²⁴ Li, H., Shi, A., Li, M., & Zhang, X. 2013. *Effect of pH, Temperature, Dissolved Oxygen, and Flow Rate of Overlying Water on Heavy Metals Release from Storm Sewer Sediments*. Journal of Chemistry, 2013, 434012. doi:10.1155/2013/434012.

(SWAT) (Neitsch et al. 2011).³² The model delineates subbasins and reaches at the resolution of 14-digit hydrologic unit codes (HUCs).³³ While these models simulate impacts on eutrophication in receiving streams, they are limited to a daily timestep, and EPA is considering a more detailed model analysis of algal and DO kinetics. Additional details on model setup, including calibration results, can be found in Appendix A of the Environmental Assessment document.

EPA identified three case study locations to help demonstrate the water quality effects of the proposed rule at a fine spatial scale. Case study locations were chosen based on the contributions of NPDES-permitted dischargers, areas of existing impairment(s), and availability of observed data to facilitate model calibration. Regarding NPDES-permitted discharger contributions, watershed locations were considered if they contained one or more discharger with significant nutrient loads³⁴ and were upstream or headwater locations as these areas were less likely to be overwhelmed by baseline nonpoint source loads or greatly dilute point source contributions with the volume of receiving water. Watersheds with previously documented water quality impairments or published Total Maximum Daily Loads³⁵ were also prioritized, especially if the impairments are due to common pollutants from the MPP industry, such as nutrients, pathogens, organic enrichment (i.e., BOD), or sediment.

EPA also modeled larger watersheds to demonstrate the water quality impacts of the proposed rule over a greater portion of the nation covering a wider variety of land area types than the case studies. Three HUC2 watershed³⁶ were selected for modeling based on the presence of both MPP facilities routing wastewater effluent directly to waters of the U.S. (direct dischargers) and facilities discharging wastewater to an offsite POTW (indirect dischargers). Watersheds that had been previously

calibrated and/or had adequate observed data³⁷ available were prioritized.

To further understand the environments and waterbody use types which may be impacted by MPP wastewater discharge under baseline conditions, EPA conducted a GIS analysis to identify sensitive habitats downstream of direct and indirect MPP facility final wastewater outfalls across the nation. EPA used publicly available databases to identify impaired waters, fisheries (shellfishing, recreational, and commercial fishing), threatened and endangered species habitat and protected areas, priority waterbodies, and recreational areas within 25 river miles of a process wastewater outfall. EPA also identified the number of each sensitive environment type that would be expected to experience improved water quality under proposed rule Options. See Chapter 4 and Appendix B of the EA for details regarding datasets used and GIS methodologies.

D. Results From the Environmental Assessment

EPA focused its quantitative analyses on the environmental and human health impacts associated with exposure to pollutants via the surface water pathway. Both direct and indirect discharge sources were considered in these analyses and models. These analyses concentrated on improvements in surface water quality; impacts to sensitive environments, including wildlife habitat, fisheries, and impaired waters; and impacts to human health from consumption of contaminated drinking water or exposure to contaminated surface waters via recreational activities.

1. Improvements in Surface Water Quality

EPA estimated that reduced pollutant loadings to surface waters will improve water quality by reducing nutrient concentrations in all waters immediately downstream of MPP wastewater outfalls under proposed rule options in the case study modeling. When the most stringent technology options were applied (representing regulatory Option 3) nutrient concentrations changed minimally in certain watersheds (less than 1 percent reductions), while other receiving waters could on average see up to 81

percent and 83 percent reductions in TP and TN, respectively.

The pollutants associated with MPP wastewater causing the greatest number of impairments under baseline conditions were pathogens, nutrients, and oxygen depletion. EPA estimated that 70 percent and 75 percent of all stream segments³⁸ of direct and indirect wastewater outfalls, respectively, are impaired for at least one pollutant found in MPP wastewater. EPA estimated that within these impaired stream segments, 63 percent and 5.83 percent of impacted river miles downstream of direct and indirect dischargers, respectively, would benefit from improved upstream water under Options 1 and 2. Because nutrient limits are included under Option 2 for indirect discharges, however, water quality improvements in these impaired catchments would likely be greater. Under proposed Option 3, 66 percent and 29 percent of stream segments downstream of direct and indirect dischargers, respectively, would benefit from decrease upstream pollutant loadings. EPA did not estimate the number of catchments that would no longer be considered impaired under each proposed rule option as impairment status may be dependent on many factors beyond the scope of this rulemaking.

2. Improvements to Vulnerable Species Habitats

EPA identified 108 unique vulnerable animal and insect species that have habitat located in watersheds potentially impacted by MPP wastewater discharge. Species groups included amphibians, birds, clams, crustaceans, fishes, insects, mammals, reptiles, and snails. Of these species, 26 percent were considered of lower vulnerability, 5 percent were moderately vulnerable, and 69 percent were found to be of a high vulnerability status. EPA estimated that 88 percent and 90 percent of downstream waterbodies serving as habitat to these threatened and endangered species could see water quality improvements compared to baseline conditions, under Options 1 or 2, and 3, respectively.

EPA's analysis indicated that MPP wastewater discharges to surface waters pose the greatest risk to *Quadrula cylindrica cylindrica*, also known as the Rabbitsfoot clam, which is considered threatened, with 358 stream miles of habitat impacted by MPP discharges. Under all three rule options, 15 of the 16 upstream MPP facilities would be required to adhere to new limits, and thus improve *Q. cylindrica* habitat in

³² Neitsch, S.L., Williams, J.R., Arnold, J.G. and Kiniry, J.R. 2011. *Soil and Water Assessment Tool Theoretical Documentation Version 2009*. Texas Water Resources Institute, College Station.

³³ <https://www.usgs.gov/tools/hydrologic-unit-maps>.

³⁴ An initial filter for "significant nutrient loads" was 100 kg/day.

³⁵ The maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet water quality standards for that particular pollutant.

³⁶ HUC2 watersheds are regional divisions and average 177,560 square miles across the U.S.

³⁷ Adequate observed data refers to in-stream flow, TSS, TN, and TP measurements taken within the watershed selected for modeling that allowed for calibration to be successfully completed. When available data was insufficient, calibration parameters from similar watersheds (as identified by a cluster analysis) within the same HUC2 region were applied. See Appendix A of the BCA for additional details.

³⁸ Within 25 river miles.

these reaches. EPA estimated that 29 percent of the stream segments that serve as habitat to threatened and/or endangered species are also impaired for at least one pollutant found in MPP wastewater. Nationally, EPA estimated that 75 species with a high vulnerability (69 percent) to change in water quality currently are found in watersheds that are impaired under baseline conditions, and that all of these watersheds may experience improvements in water quality under the proposed rule Options 2 and 3, and 98 percent under preferred Option 1.

3. Human Health Impact Improvements

Intentional or accidental consumption of water contaminated with pollutants such as pathogens and nitrate can cause health impacts in humans, ranging from gastrointestinal illness to thyroid disease. EPA estimated that implementation of the proposed rule options would result in improvements in source water quality to 121 drinking water service areas under Options 1 and 2, and 147 under Option 3. EPA also estimated the number of recreational areas that may experience improved water conditions under each rule option. For Options 1 or 2, and 3, 58 percent and 64 percent of recreational areas are expected to improve, respectively, the majority of which are classified as local parks.

Impacts to fisheries and fishing habitat are also of concern to human

health as the consumption of contaminated shellfish can cause illness. Also, some individuals rely on subsistence fishing for survival and the reduction of fish populations due to compromised habitat can threaten their wellbeing. EPA estimated that 26 unique species used in commercial fishing may potentially be impacted by MPP wastewater release under baseline conditions, as well as 1 commercial oyster bed, and 9 recreational fishing areas. For preferred Option 1, 96 percent of all commercial fisheries, and 67 percent of recreational fishing areas, may benefit from improved water quality. These statistics are the same for Options 2 and 3 as this analysis currently reflects impacts from direct discharging facilities only. EPA plans to expand this analysis to include impacts to fishing areas from indirect MPP wastewater discharge to support any final rule.

XII. Benefits Analysis

This section summarizes EPA's estimates of the changes in national environmental benefits expected to result from changes in MPP facility wastewater discharges described in Section IX of this preamble, and the resultant environmental effects, summarized in Section XI of this preamble. The Benefit Cost Analysis (BCA) report provides additional details on the benefits methodologies and analyses.

A. Categories of Benefits Analyzed

Table XII–1 of this preamble summarizes benefit categories associated with the three regulatory options and notes which categories EPA was able to quantify and monetize. Analyzed benefits fall into four broad categories: (1) Human health benefits from surface water quality improvements, (2) ecological conditions and effects on recreational use from surface water quality changes, (3) market and productivity benefits, and (4) air-related effects. Within these broad categories, EPA assessed the benefits associated with the regulatory options in this proposal with varying degrees of completeness and rigor. Where possible, EPA quantified the expected changes in effects and estimated monetary values. However, data limitations, modeling limitations, and gaps in the understanding of how society values certain environmental changes prevented EPA from quantifying and/or monetizing some benefit categories. EPA notes that all human health and environmental improvements discussed in the EA also represent benefits of the proposal (whether quantified or unquantified), and the Agency will continue to enhance its benefits analysis methods where appropriate throughout the rulemaking process.

TABLE XII–1—SUMMARY OF ESTIMATED BENEFITS CATEGORIES

Category	Effect of regulatory options	Benefits analysis		
		Quantified	Monetized	Qualitative discussion
Human Health Benefits from Surface Water Quality Improvements				
Changes in incidence of adverse human health effects (e.g., cases of gastro-intestinal illness) from exposure to MPP pollutants via recreational use.	Reduced exposure to <i>E. coli</i> and HAB-related illnesses from primary contact recreation and recreationally caught and consumed fish and shellfish.	.....	.....	✓
Changes in incidence of adverse human health effects (e.g., developmental effects, gastrointestinal illness, cancer) from exposure to MPP pollutants via drinking water.	Reduced exposure to high nitrate concentrations, <i>E. coli</i> , and DBPs (which may be generated indirectly due to nutrient enrichment and eutrophication) in drinking water.	.....	.....	✓
Ecological Condition and Recreational Use Effects from Surface Water Quality Changes				
Benefits from changes in surface water quality, including: aquatic and wildlife habitat, ^a water-based recreation, ^a aesthetic benefits, ^a and nonuse values ^a .	Improved ambient water quality in receiving and downstream reaches, resulting in: enhanced value of swimming, fishing, boating, and near-water activities from water quality changes; improved aesthetics from shifts in water clarity, color, odor, including nearby site amenities for residing, working, and traveling; and Improved existence, option, and bequest values from improved ecosystem health.	✓	✓	✓
Benefits from the protection of threatened and endangered species.	Improved T&E species habitat and potential effects on T&E species populations.	✓	.....	✓

TABLE XII-1—SUMMARY OF ESTIMATED BENEFITS CATEGORIES—Continued

Category	Effect of regulatory options	Benefits analysis		
		Quantified	Monetized	Qualitative discussion
Market and Productivity Effects				
Changes in drinking water treatment costs	Improved quality of source water used for drinking .....	.....	.....	✓
Changes in wastewater treatment costs	Reduced wastewater treatment costs at POTWs .....	.....	.....	✓
Changes in the fees paid by MPP indirect dischargers to POTWs.	Reduced (concentration-based) fees paid to POTWs by MPP indirect dischargers for discharges of TN, TP, BOD, and TSS.	.....	.....	✓
Livestock watering	Improved quality of surface waters used for livestock watering.	.....	.....	✓
Changes in commercial fishing yields	Improved fisheries yield and harvest quality due to aquatic habitat changes.	✓	.....	✓
Changes in subsistence harvesting yields	Improved fisheries yield and harvest quality due to aquatic habitat changes; Reduced risk of consuming contaminated fish and shellfish.	.....	.....	✓
Changes in tourism and participation in water recreation.	Changes in participation in water-based recreation, increases in visitation and purchases from supporting businesses.	.....	.....	✓
Changes in property values	Improved property values from changes in water quality.	.....	.....	✓
Air Quality-Related Effects				
Changes in air emissions of PM _{2.5}	Changes in mortality and morbidity from exposure to particulate matter (PM _{2.5}) emitted directly or linked to changes in NO _x and SO ₂ emissions (precursors to PM _{2.5} and ozone).	✓	✓	✓
Changes in air emissions of NO _x and SO ₂	Changes in ecosystem effects; visibility impairment; and human health effects from direct exposure to NO _x , SO ₂ , and hazardous air pollutants.	✓	✓	✓
Changes in air emissions of CO ₂ and CH ₄	Changes in climate change effects; Social cost of carbon and methane.	✓	✓	✓

^a These values are implicit in the total WTP for water quality improvements.

Source: Benefit Costs Analysis for Revisions to the Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point. USEPA. 2023.

B. Quantification and Monetization of Benefits

1. Human Health Effects From Surface Water Quality Changes

Pollutants present in MPP wastewater discharges (e.g., pathogenic bacteria, nitrogen, and phosphorus) can cause a variety of adverse human health effects. The regulatory options affect human health risk by changing effluent discharges to surface waters and, as a result, reducing exposure to MPP pollutants in surface water via three exposure pathways: (1) Primary contact recreation in waters affected by MPP discharges, (2) consumption of drinking water sourced from surface waters affected by MPP discharges, and (3) consumption of shellfish taken from waters affected by MPP discharges.

Due to data limitations and uncertainties, EPA was only able to monetize a subset of the health benefits associated with changes in pollutant discharges from MPP facilities resulting from the regulatory options in this proposal as compared to baseline. EPA anticipates monetizing benefits

associated with a reduction in illness due to primary contact recreation for any final rule making. See the BCA, Chapter 3 and Appendix A for more details on the water quality index (WQI) used.

2. Ecological Condition and Recreational Use Effects From Changes in Surface Water Quality Improvements

EPA evaluated whether the regulatory options in this proposal would alter aquatic habitats and human welfare by changing concentrations of pollutants such as ammonia, nitrogen, phosphorus, BOD, DO, fecal coliform bacteria, chlorides, and suspended sediment relative to baseline. As a result, the usability of some recreational waters relative to baseline discharge conditions could improve under each option, thereby affecting recreational users. Changes in pollutant loadings can also change the attractiveness of recreational waters by making recreational trips more or less enjoyable. The regulatory options may also change nonuse values stemming from bequest, altruism, and existence motivations. Individuals may

value water quality maintenance, ecosystem protection, and healthy species populations independent of any use of those attributes.

EPA used a WQI to translate water quality measurements, gathered for multiple parameters that are indicative of various aspects of water quality, into a single numerical indicator that reflects achievement of quality consistent with the suitability for certain uses. The WQI included six parameters: DO, BOD, *E. coli*, total nitrogen, total phosphorus, and TSS. EPA modeled changes in all parameters, using modeled data for inputs for all parameters except *E. coli*, where monitoring data was used. Chapter 3 and Appendix A of the BCA discuss the WQI methodology in detail.

EPA estimated the change in monetized benefit values using an updated version of the meta-regressions of surface water valuation studies used in the benefit analyses of the 2015 (USEPA. 2015. EPA-821-R-15-005) and 2020 (USEPA. 2020. EPA-821-R-20-003) rules affecting the Steam Electric point source category. The meta-regressions quantify average

household willingness to pay (WTP) for incremental improvements in surface water quality. Chapter 4 and Appendix B of the BCA provides additional detail on the valuation methodology.

Table XII–2 presents the main analysis results of WTP estimates, based on Model 1 of the meta regression analysis and using 3 percent and 7

percent discount rates (USEPA. 2020. EPA–821–R–20–003). The total annualized values of water quality improvements from reducing nutrients, bacteria and pathogens, conventional pollutants, and other pollutants discharges from MPP facilities to affected HUC12s ranged from \$0.52

million under Option 1 (7 percent discount rate) to \$33 million under Option 3 (3 percent discount rate). These results represent only a limited regional assessment of benefits and do not reflect national water quality benefits. See the Benefit Cost Analysis for a more detailed explanation.

TABLE XII–2—ESTIMATED HOUSEHOLD AND TOTAL ANNUALIZED WILLINGNESS-TO-PAY FOR WATER QUALITY IMPROVEMENTS UNDER THE REGULATORY OPTIONS MID-ATLANTIC REGION ONLY

[Note—Additional water quality modeling results and additional benefits to be completed week of October 23]

Proposed regulatory option	Affected population (millions) ^a	Average annual WTP per person (2022\$) ^b	Total annualized WTP (millions 2022\$) ^{b c}	
			3% Discount rate	7% Discount rate
Option 1	47.2	\$0.01	\$0.56	\$0.52
Option 2	47.2	0.39	18.4	17.4
Option 3	47.2	0.70	33.0	31.1

^a Estimates based on Model 1, which provides EPA’s main estimate of non-market benefits.

^c Estimated benefits are regional-level rather than national-level since water quality modeling was limited to the Mid-Atlantic Region.

Source: Benefit Cost Analysis for Revisions to the Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category. USEPA. 2023. B.

3. Changes in Air Quality Related Effects

The proposed rule has the potential to affect air pollution through three main mechanisms: (1) Indirect changes in CO₂, NO_x, SO₂, and PM_{2.5} emissions associated with changes in electricity consumed to power wastewater treatment processes at MPP facilities and POTWs; (2) transportation-related air pollutant emissions (CO₂, NO_x, and SO₂) due to changes in the trucking of solid waste for land application, landfilling, or composting; and (3) changes in direct process-related emissions or capture of methane (CH₄) generated at MPP facilities and POTWs.

EPA evaluated potential effects resulting from net changes in air

emissions of five pollutants: CO₂, CH₄, NO_x, SO₂, and primary PM_{2.5}. CO₂ and CH₄ are key GHGs that EPA has determined endanger public health and welfare through their contribution to climate change. NO_x and SO₂ are precursors to fine particles sized 2.5 microns and smaller (PM_{2.5}), which are also emitted directly, and NO_x is an ozone precursor. These air pollutants cause a variety of adverse health effects including premature death, nonfatal heart attacks, hospital admissions, emergency department visits, upper and lower respiratory symptoms, acute bronchitis, aggravated asthma, lost work and school days, and acute respiratory symptoms.

Table XII–3 of this preamble shows the changes in emissions of CO₂, CH₄,

NO_x, SO₂, and primary PM_{2.5} under all proposed rule options relative to baseline. The proposed rule would result in a net increase in the emissions of CO₂, CH₄, NO_x, and SO₂ under preferred Option 1. Emissions of these pollutants increase incrementally under both Options 2 and 3, with the most notable changes estimated for methane, NO_x, and CO₂ emissions. These estimated increases in emissions are associated with changes in electricity consumption to power additional wastewater treatment processes; transportation-related air emissions due to changes in the trucking of solid waste for offsite land application, composting, and/or landfilling; and changes in direct process-related emissions.

TABLE XII–3—ESTIMATED CHANGES IN AIR POLLUTION EMISSIONS UNDER THE PROPOSED RULE OPTIONS INCREMENTAL INCREASE FROM BASELINE *

Proposed regulatory option	CO ₂ (tons/year)	CH ₄ (tons/year)	NO _x (tons/year)	SO ₂ (tons/year)
Option 1	27,560	2.25	17.85	16.60
Option 2	100,890	8.30	63.26	61.21
Option 3	145,030	11.89	90.18	88.21

* Emissions are not additive between options.

EPA followed the same methodology used in analyzing the revisions to the technology based ELGs for the steam electric generating point source category to monetize human health related impacts from changes in NO_x, SO₂, and PM_{2.5} emissions (USEPA. 2015. EPA–821–R–15–005). EPA used the

Emissions & Generation Resource Integrated Database (eGRID) to estimate changes in the tons of NO_x and SO₂ emissions associated with changes in electricity consumed at MPP facilities

and POTWs (USEPA. 2023).³⁹ The eGRID database provides emission factors based on historical electricity generation (observed or estimated using 2021 data). It is designed to be used to

³⁹ USEPA. 2023. *Emissions & Generation Resource Integrated Database (eGRID)*. Retrieved from <https://www.epa.gov/egrid>.

estimate the emissions footprint of marginal changes in electricity consumption, assuming a constant generation mix. The Integrated Power Model (IPM) simulates future electricity generation (and associated emissions) to meet projected demand, given market, environmental, and other system constraints. Either approach can be used to estimate indirect emissions from electricity consumption. The eGRID database provides static emission factors, whereas the IPM can provide predicted changes in the profile of electricity generation.

EPA's use of EGRID values for the proposed rule analysis is conservative in that it would tend to overstate emissions associated with the increased power consumption to operate MPP wastewater treatment systems since emission factors are expected to decline in the coming decades (*e.g.*, due to the 2022 IRA). For the final rule, EPA plans to account for these changes by using future emission factors derived using EPA's IPM model. EPA requests

comment on using IPM results to estimate future emissions.

4. Other Quantified and/or Monetized Benefits

(a) Benefits to Threatened and Endangered Species

To assess the potential for the rule to benefit threatened and endangered species (both aquatic and terrestrial) relative to the baseline, EPA analyzed the overlap between waters expected to see reductions in wildlife water quality criteria exceedance status under a particular option and the known critical habitat locations of high vulnerability threatened and endangered species. EPA examined the life history traits of potentially affected threatened and endangered species and categorized them by potential for population impacts due to surface water quality changes. Chapter 2 of the BCA and Chapter 4 of the EA provide additional detail on the methodology. EPA's analysis showed that there are 113 species whose known critical habitats overlap with surface waters downstream

of facilities that may be affected by the proposed options. Of these species, 28 were considered to be of lower vulnerability status, 5 were considered moderate vulnerable, and 78 were consider highly vulnerable. Principal sources of uncertainty include the specifics of how changes under the regulatory options will impact threatened and endangered species, exact spatial distribution of the species, and additional species of concern not considered.

C. Total Monetized Benefits

Using the analysis approach described above, EPA estimated annualized benefits of the three regulatory options for all monetized categories. Table XII–5 and Table XII–6 of this preamble summarize the total annualized benefits using 3 percent and 7 percent discount rates, respectively. The preferred option (Option 1) has monetized benefits estimated at \$90 million using a three percent discount rate and \$85 million using a seven percent discount rate.

TABLE XII–5—SUMMARY OF TOTAL ESTIMATED ANNUALIZED MONETIZED BENEFITS AT THREE PERCENT
[In millions, 2022\$, at 2025]

Benefit category ^a	Option 1	Option 2	Option 3
Human Health Effects from Water Quality Changes: Change in gastrointestinal illness rates from pathogen exposure.	A	A	A.
Ecological Conditions and Recreational Use Changes: Use and nonuse values for water quality improvements (for Mid-Atlantic Region only).	\$95.6 + B	\$166.1 + B	\$208.4 + B.
Market and Productivity Effects: Changes in Drinking Water Treatment Costs	C	C	C.
Air-Related Effects: Changes in CO ₂ and CH ₄ air emissions	–\$1.9	–\$7.0	–\$10.1.
Changes in human health effects from Changes in NO _x and SO ₂ emissions.	–\$3.5	–\$12.9	–\$18.6.
Total	\$90+A+B+C	\$146+A+B+C	\$180+A+B+C.

^a “A” represents unmonetized human health effects from water quality improvements. “B” represents the additional unquantified non-market water quality benefits. “C” represents the unmonetized market and productivity effects of improved water quality.

TABLE XII–6—SUMMARY OF TOTAL ESTIMATED ANNUALIZED MONETIZED BENEFITS AT SEVEN PERCENT
[In millions, 2022\$, at 2025]

Benefit category ^a	Option 1	Option 2	Option 3
Human Health Effects from Water Quality Changes: Change in gastrointestinal illness rates from pathogen exposure.	A	A	A.
Ecological Conditions and Recreational Use Changes: Use and nonuse values for water quality improvements (for Mid-Atlantic Region only).	\$89.0 + B	\$154.4 + B	\$193.7 + B.
Market and Productivity Effects: Changes in Drinking Water Treatment Costs	C	C	C.
Air-Related Effects: Changes in CO ₂ and CH ₄ air emissions	–\$1.9	–\$7.0	–\$10.1.
Changes in human health effects from Changes in NO _x and SO ₂ emissions.	–\$2.7	–\$10.1	–\$14.5.

TABLE XII–6—SUMMARY OF TOTAL ESTIMATED ANNUALIZED MONETIZED BENEFITS AT SEVEN PERCENT—Continued
[In millions, 2022\$, at 2025]

Benefit category ^a	Option 1	Option 2	Option 3
Total	\$85+A+B+C	\$137+A+B+C	\$179+A+B+C.

^a “A” represents unmonetized human health effects from water quality improvements. “B” represents the additional unmonetized non-market water quality benefits. “C” represents the unmonetized market and productivity effects of improved water quality.

D. Non-Monetized Benefits

The monetary value of the proposed rule’s effects on social welfare does not account for all effects of the proposed options because, as described above, EPA is currently unable to quantify and/or monetize some categories. EPA anticipates the proposed rule Options would also generate important unquantified benefits, including but not limited to:

- Reduced incidence of adverse human health effects (e.g., developmental effects, gastrointestinal illness, cancer) from exposure to MPP pollutants via drinking water
- Protection of threatened and endangered species
- Reduction in wastewater treatment costs at some POTWs
- Changes in fees paid by some MPP indirect discharges based on concentration of conventional pollutants
- Improved quality of surface waters used for livestock watering
- Changes in fisheries yield and harvest due to aquatic habitat changes, impacting subsistence fishing populations as well as commercial fishing operations
- Changes in participation in water-based recreation
- Changes in property values from changes in water quality

The BCA Report discusses changes in these potentially important effects qualitatively, indicating their potential magnitude where possible. EPA will continue to seek to enhance its approaches to quantify and/or monetize a broader set of benefits for any final rule and solicits comment on monetizing some of these additional benefits categories.

XIII. Environmental Justice Impacts

Consistent with EPA’s commitment to integrating environmental justice (EJ) in the Agency’s actions, the Agency analyzed the distribution of impacts of this action across all potentially affected communities and sought input from stakeholders representing communities with potential EJ concerns. EPA prepared this analysis to implement the recommendations of the Agency’s EJ

Technical Guidance (USEPA. 2016).⁴⁰ For this ELG rulemaking, this analysis was conducted as part of the EA alongside other non-statutorily required analyses, such as water quality improvements, with the discussion of quantified benefits to specific communities and community groups included in the BCA. This analysis is intended to inform the public of the distributional effects of this proposal and the input EPA received from communities with potential EJ concerns. E.O. 12898 and E.O. 14096 are discussed in Section XVI.J of this preamble.

Overall, the analysis showed that communities near MPP facilities, surface waters downstream⁴¹ of MPP wastewater discharge, those receiving drinking water from a potentially impacted service area, or potentially relying on subsistence fishing have greater proportions of low-income individuals and racial/ethnic minorities than the national average. Benefits associated with improvements to water quality resulting from pollutant reductions in surface water and drinking water are expected to accrue to low-income populations and some minorities at a marginally higher rate when compared to all impacted communities under all proposed regulatory options.

A. Literature Review

EPA conducted a literature review to identify studies, data, and research describing the environmental and human health impacts of MPP facilities on low-income individuals and racial/ethnic minorities, focusing primarily on facility discharges of pollutants to water. EPA identified 21 papers published since 2005 that were relevant to this rule making. These sources suggested that MPP facilities are often located in rural areas with multiple large facilities in the same county or region, and that half of the communities surrounding slaughterhouses in the U.S. contain at least 30 percent of residents

living below the poverty line, which is over twice the national average (Winders and Abrell. 2021)⁴² (Burkhart et al. 2018).⁴³ The review also highlighted the ecological and health impacts of pollutant contamination of surface waters from MPP wastewater, such as elevated nitrogen discharge contributing to algal bloom occurrence and causing methemoglobinemia, or blue baby syndrome, in infants consuming drinking water with high nitrate levels (Environment America Center. 2020).⁴⁴ These findings suggest that wastewater discharge from MPP facilities differentially impacts various communities and population groups. EPA solicits comment on additional literature that discusses potential EJ concerns related to the specific changes being proposed to MPP wastewater discharges. For further discussion of the literature review, see Chapter 7 of the EA.

B. Proximity Analyses

EPA performed a set of proximity analyses using the EJSCREENBatch R package (USEPA. 2022)⁴⁵ to identify the environmental and socioeconomic characteristics of the communities that are expected to be impacted by discharges from MPP facilities via relevant exposure pathways.

First, EPA analyzed communities located within a 1-mile radius of an MPP facility using facility coordinates. EPA found that communities within 1 mile of an MPP facility have greater proportions of low-income individuals and individuals identifying as Asian, Black, and/or Hispanic than the national average. EPA also considered how these

⁴⁰ USEPA. 2016. *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*. <https://www.epa.gov/environmental-justice/technical-guidance-assessing-environmental-justice-regulatory-analysis>.

⁴¹ Within 25 river miles.

⁴² Winders, D.J., & Abrell, E. 2021. *Slaughterhouse Workers, Animals, and the Environment: The Need for a Rights-Centered Regulatory Framework in the United States That Recognizes Interconnected Interests*. Health and Human Rights Journal. Vol. 23: No. 2.

⁴³ Burkhart, K., Bernhardt, C., Pelton, T., Schaeffer, E., and Phillips, A. 2018. *Water Pollution from Slaughterhouses*. The Environmental Integrity Project. <https://earthjustice.org/>.

⁴⁴ Environment America Center. 2020. *Slaughterhouses Are Polluting Our Waterways*. <https://environmentamericacenter.org/sites/environment/files/reports/Slaughterhouse%20factsheet%20FINAL.pdf>.

⁴⁵ USEPA. March 2022. EJSCREENBatch. V2.0. Available online: <https://github.com/USEPA/EJSCREENBatch>.

communities' exposure to relevant environmental indicators⁴⁶ of concern may change: PM 2.5, diesel PM, and traffic proximity.⁴⁷ These indicators all exceeded the national average, with traffic proximity in these communities more than double that of the average person.

Second, EPA examined the characteristics of communities located within a one-mile distance of a surface waterbody downstream of MPP facilities.⁴⁸ EPA found that communities downstream of MPP wastewater outfalls are on average exposed to higher P.M 2.5 levels and have a heightened proximity to traffic compared to national averages. These communities also have greater proportions of low-income individuals compared to the national average.

Lastly, EPA conducted an analysis of communities served by public water systems (PWSs) either with a source water intake within 25 miles downstream of an MPP wastewater outfall (direct PWS) or buying water from a direct PWS (buying PWS). Service areas were determined using a multi-tiered approach based on availability, first using service areas identified in the Hydroshare (SimpleLab, EPIC.2022),⁴⁹ then 2022 TIGER zip code tabulated areas, and finally county boundaries. Communities served by potentially impacted drinking water service areas have a greater proportion of individuals who identify as Black/African American when compared to the national average. This trend is most prominent in buying PWSs.

For additional detail on the proximity analysis and drinking water service area methodologies, and further results of the screening analysis, please refer to Chapter 7 of the EA.

⁴⁶ Environmental indicator exposures were determined from raw indicator scores available in EJSCREEN V2.1. Each CBG score was population weighted before averaging across all communities. Environmental indicator score definitions are available in the EJSCREEN Technical Documentation (U.S. EPA. 2023. EJSCREEN Technical Documentation).

⁴⁷ EPA estimates that PM 2.5 will increase under Options 2 and 3 due to an increase in emissions from increased wastewater treatment. Diesel PM and traffic volume near facilities are predicted to rise as industrial sludge generation from treatment changes will increase under all proposed options, resulting in increased trucking for offsite land application. For further details on these estimates, refer to Section X of this document and the Section 6 of the EA.

⁴⁸ EPA defined downstream surface waterbodies as a segment 25 miles downstream of the initial common identifiers (COMIDs) identified for each direct discharge outfall.

⁴⁹ SimpleLab, EPIC. 2022. U.S. Community Water Systems Service Boundaries, v2.4.0, HydroShare, <http://www.hydroshare.org/resource/20b908d73a74fc1a097a3b3f2b58bf>.

C. Community Outreach

Due to the large number of potential communities with EJ concerns who could be affected, as identified in the results of the screening analysis, EPA used a wide-reaching approach to community engagement to maximize awareness of the rulemaking and the potential impacts of proposed policy options. An overview of the rulemaking and its potential interest to communities was presented to the Office of Environmental Justice and External Civil Rights management team on May 30, 2023 to increase national awareness of the proposed rulemaking. This team includes EJ National Program and Regional managers, who engage directly with communities across the country. EPA also presented a rulemaking overview and held a discussion session with participants of the National Environmental Justice Community Engagement Call on June 20th, 2023, which had over 200 attendees.⁵⁰

D. Distribution of Benefits

EPA evaluated the distribution of estimated benefits and costs of the proposed regulatory options across the affected population, with consideration of their distribution among communities with environmental justice concerns. Office of Management and Budget (OMB) Circular A-4, which provides guidance to agencies on the development of regulatory analyses as required under E.O. 12866, states that regulatory analyses "should provide a separate description of distributional effects (*i.e.*, how both benefits and costs are distributed among sub-populations of particular concern)."

To determine how benefits from pollutant reductions in MPP wastewater may be distributed among communities with environmental justice concerns, EPA calculated the population-weighted averages of these groups for impacted drinking water service areas and communities potentially reliant on subsistence fishing from surface waters downstream of MPP wastewater outfalls. EPA then compared these community characteristics to the subset of these populations who are expected to benefit under each proposed regulatory option.

1. Drinking Water Quality

EPA estimated that 7,595,010 people receive drinking water from a Public Water System (PWS) that either directly intakes source water from a surface

water potentially impacted by MPP wastewater (direct) or from a PWS that buys drinking water from a direct PWS (buying). The population of these service areas (SAs) receiving potentially impacted drinking water has greater proportions of individuals identifying as Black/African American than the national average. Under all proposed regulatory options, drinking water benefits from improved source water are expected to accrue at a higher rate to low-income and Black/African American individuals. For Options 1 and 2, which impact the same direct discharging facilities and therefore the same service areas, 75.1 percent of the total receiving population would be impacted, 31.2 percent and 22.7 percent of which identify as low income and Black/African American, respectively. For Option 3, 82.7 percent of the total receiving population would be impacted, 30.5 percent and 22.1 percent of which identify as low income and Black/African American, respectively. For further discussion of changes in the distribution of drinking water benefits under proposed rule options, refer to section 3 of Chapter 7 of the EA.

2. Fisher Population

EPA estimated that 13,244,292 people live within a 50-mile distance of a downstream surface water potentially impacted by MPP wastewater.⁵¹ This population is representative of the group of people who may travel to these waterbodies for recreational or subsistence fishing opportunities. Communities in these areas have on average greater proportions of low-income individuals than the national average. Under all regulatory options, benefits from improved fish habitat are expected to accrue at a higher rate to low-income individuals, although a greater number of individuals would potentially benefit under Option 3. See section 3 of Chapter 7 of the EA for a further discussion of these results.

E. Results of the Analysis

The results of EPA's screening analyses found that communities near MPP facilities, downstream surface waters, and those using impacted surface waters have greater proportions of low-income and/or racial/ethnic minorities than the national average.

⁵¹ Studies of fishers' behavior and practices have made similar observations (*e.g.*, Sohngen, B., Zhang, W., Bruskotter, J., & Sheldon, B. 2015. *Results from a 2014 Survey of Lake Erie Anglers*. Columbus, OH: The Ohio State University, Department of Agricultural, Environmental and Development Economics and School of Environment & Natural Resources; Illinois-Indiana Sea Grant. 2018. *Lake Michigan Anglers Boost Local Illinois and Indiana Economies*.)

⁵⁰ A recording of this meeting is available on the National Environmental Justice Community Engagement website through the "Previous Calls" link.

The results of EPA's distributional analysis of impacts suggested that improvements in drinking water quality and to fishing areas will differentially accrue to minority and/or low-income populations under all proposed regulatory options. Remaining exposures, impacts, costs, and benefits analyzed are small enough that EPA could not conclude whether changes in differential impacts would occur.

XIV. Development of Effluent Limitations and Standards

This section describes the statistical methodology used to calculate the long-term averages (LTAs), variability factors, and limitations for BAT, BPT, new source performance standards and pretreatment standards for existing and new sources. EPA's statistical methodology is well established and has been upheld by courts *Chemical Mfrs. Assn. v. EPA*, 877 F.2d 177, 211–12 (5th Cir. 1989). The methodology is based on LTA effluent values and variability factors that account for variation in treatment performance of the model technology. The LTAs, variability factors, and limitations were based upon pollutant concentrations collected from EPA sampling episodes, DMR data, data from State EPA offices, and data submitted by industry.

The proposed ELGs, collectively referred to in the remainder of this section as "limitations," for pollutants for each regulatory option, as presented in this preamble, are provided as "daily maximums" and "maximums for monthly averages." Definitions provided in 40 CFR 122.2 state that the daily maximum limitation is the "highest allowable 'daily discharge,'" and the maximum for monthly average limitation is the "highest allowable average of 'daily discharges' over a calendar month, calculated as the sum of all 'daily discharges' measured during a calendar month divided by the number of 'daily discharges' measured during that month." Daily discharges are defined to be the 'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling."

EPA first determines an average performance level (the "long-term average") that a facility with well-designed and operated model technologies (which reflect the appropriate level of control) is capable of achieving. This LTA is calculated from the data from the facilities using the BPT, BCT, and BAT technologies for the regulatory option. EPA uses all values and a lognormal distribution to calculate the facility LTA, which is then

used in calculations for both limitations. EPA expects that all facilities subject to the limitations will design and operate their treatment systems to achieve the LTA performance level on a consistent basis because facilities with well-designed and operated BAT and BPT/BCT technologies have demonstrated that this can be done.

EPA then calculates the 99th percentile of daily measurements and the 95th percentile of monthly averages. The percentiles are chosen with the intention to accommodate reasonably anticipated variability within the control of the facility while also reflecting a level of performance consistent with the CWA requirement that these effluent limitations be based on the "best" available technologies. The daily maximum limitation is based on the 99th percentiles of the distribution of the daily measurements. The maximum monthly average limitation is based on the 95th percentile of the distribution of the monthly averages of the daily measurements and monthly averages. Using the LTA and the percentiles, EPA determines the daily and monthly "variability factors" (VFs), which are allowances for the variation in pollutant concentrations when processed through well designed and operated treatment systems. The allowance for variance incorporates all components of variability including process and wastewater generation, sample collection, shipping, storage, and analytical variability. If a facility operates its treatment system to meet the relevant LTA, EPA expects the facility to be able to meet the limitations. VFs assure that normal fluctuations in a facility's treatment are accounted for in the limitations. The daily VFs are calculated by dividing the 99th percentile of daily measurements by the corresponding LTA. The monthly VFs are calculated by dividing the 95th percentile of monthly measurements by the corresponding LTA.

EPA calculates LTAs and VFs for each facility with sufficient daily or monthly data. EPA then combines the LTAs and daily and monthly VFs across all facilities by calculating their median values.

To calculate the limitations, the LTAs are multiplied by the corresponding VFs. This ensures the limitations account for these reasonable excursions above the LTA. EPA's use of VFs results in limitations that are generally well above the actual LTA. For direct dischargers (BAT, BPT), EPA developed limits for total nitrogen, total phosphorus, *E. coli*, chlorides, and fecal coliform. For indirect dischargers

(PSES, PSNS), EPA developed limits for oil and grease, BOD, TSS, total nitrogen, total phosphorus, and chlorides.

A. Criteria Used To Select Data as the Basis for the Limitations and Standards

In developing ELGs for any industry, EPA qualitatively reviews all the data before selecting data that represents proper operation of the technology that forms the basis for the limitations. EPA typically uses four criteria to assess the data. The first criterion requires that the facility have the BPT, BCT, or BAT treatment technology and demonstrate consistently diligent and optimal operation. Application of this criterion typically eliminates any facility with treatment other than the candidate technology. EPA generally determines whether a facility meets this criterion based upon site visits, discussions with facility management, and/or comparison to the characteristics, operation, and performance of treatment systems at other facilities. EPA often contacts facilities to determine whether data submitted were representative of normal operating conditions for the facility and equipment. As a result of this review, EPA typically excludes the data in developing the limitations when the facility has not optimized the performance of its treatment system to the degree that represents the appropriate level of control (e.g., BPT, BCT, or BAT).

A second criterion generally requires that the influents and effluents from the treatment components represent typical wastewater from the industry, without incompatible wastewater from other sources. Application of this criterion results in EPA selecting those facilities where the commingled wastewaters did not result in substantial dilution, facilities without equalization where slug loads could result and cause frequent upsets and/or overloads, more concentrated wastewaters, or wastewaters with different types of pollutants than those generated by the waste stream for which EPA is proposing effluent limitations.

A third criterion typically ensures that the pollutants are present in the influent at sufficient concentrations to evaluate treatment effectiveness. To evaluate whether the data meet this criterion for inclusion as a basis of the limitations, EPA often uses the long-term average test (or LTA test) for facilities where EPA possesses paired influent and effluent data (see section 13 of the TDD for details of the LTA test). The test measures the influent concentrations to ensure a pollutant is present at a sufficient concentration to evaluate treatment effectiveness. If a

dataset for a pollutant fails the test (*i.e.*, pollutant not present at a treatable concentration), EPA excludes the data for that pollutant at that plant when calculating the limitations.

A fourth criterion typically requires that the data are valid and appropriate for their intended use (*e.g.*, the data must be analyzed with a sufficiently sensitive method). Also, EPA does not use data associated with periods of treatment upsets because these data would not reflect the performance from well-designed and well-operated treatment systems. In applying the fourth criterion, EPA may evaluate the pollutant concentrations, analytical methods and the associated quality control/quality assurance data, flow values, mass loading, plant logs, and other available information. As part of this evaluation, EPA reviews the process or treatment conditions that may have resulted in extreme values (high and low). As a consequence of this review, EPA may exclude data associated with certain time periods or other data outliers that reflect poor performance or analytical anomalies by an otherwise well-operated site.

B. Data Selection for Each Technology

EPA used specific data sources to derive limitations for pollutants for wastewater streams resulting from MPP process wastewater and high chlorides processes. The LTAs, VFs, and limitations for each waste stream were based on pollutant concentrations collected during EPA sampling episodes, DMR data, data provided by EPA Regions and State agencies, and data submitted by industry. EPA conducted six sampling episodes. Industry discharge data includes data submitted in the MPP Questionnaire, data submitted by facilities upon request, and publicly available discharge monitoring reports.

EPA identified facilities that were operating the BAT technology for one or more of the proposed pollutants for regulation: total nitrogen, total phosphorus, *E. coli*, oil and grease, TSS, BOD, fecal coliforms. EPA calculated the BAT LTA for a given pollutant based on the facilities operating the BAT technology basis for that pollutant.

Limitations may be based on technology transferred from a different subcategory within an industry or from another industrial category. Limitations based on transfer of technology must be supported by a conclusion that the technology is indeed transferable and a reasonable prediction that it will be capable of meeting the prescribed effluent limits (*Tanners' Council of*

America v. Train, 540 F.2d 1188 (4th Cir. 1976)).

For the proposed limitations, EPA combined data sets across all MPP processes to give a single limit per analyte for the industry. As the raw materials for MPP processes are animals/animal products, composed of carbon, nitrogen, and phosphorus, EPA finds combining data from different MPP processes to be reasonable. Additionally, with the available data, EPA performed a comparison of influent from the different MPP processes and found the wastewater characteristics to be comparable. Therefore, EPA proposes to find that the combination is reasonable and solicits data to inform this analysis.

Additional details on the data and methodology used to calculate the effluent limitations in today's proposal can be found in TDD section 13. In addition, the proposed limitations for each level of control for the preferred Option 1 can be found in the proposed regulatory text following this preamble.

In addition to the proposed limitations, as described earlier EPA is soliciting comment on including effluent limitations for *E. coli* in addition to, or in place of, limitations for fecal coliform for direct discharging facilities. Based on data available to EPA at the time of proposal, the monthly average limitation for *E. coli* would be 9 MPN or CFU per 100 mL (see the TDD for additional information). EPA solicits comment on this value as well as the data and methodology used to calculate the proposed effluent limitations in today's proposal. EPA also solicits comment on including effluent limitations for chlorides, which are proposed as zero-discharge for high chlorides processes. In addition to general comments related to the calculation of proposed effluent limitations, EPA also solicits comment on combining data across subcategories in developing the proposed limitations. EPA also solicits additional daily and monthly data from facilities across the industry.

XV. Regulatory Implementation

A. Implementation of New Limitations and Standards

ELGs act as a primary mechanism to control the discharge of pollutants to waters of the United States. This proposed rule would be applied to MPP wastewater discharges through incorporation into NPDES permits issued by the EPA or States under CWA section 402 (33 U.S.C. 1342) and through pretreatment program

requirements under CWA section 307 (33 U.S.C. 1317).

The Agency has developed the limitations and standards for this proposed rule to control the discharge of pollutants from the MPP point source category. Once promulgated, those permits or control mechanisms issued after this rule's effective date would be required to incorporate the effluent limitations guidelines and standards, as applicable. Also, under section 510 of the CWA (33 U.S.C. 1370), States may require effluent limitations under State law as long as they are no less stringent than the requirements of a final rule. Finally, in addition to requiring application of the technology-based ELGs promulgated in a final rule, CWA section 301(b)(1)(C) (33 U.S.C. 1311(b)(1)(C)) requires the permitting authority to impose more stringent effluent limitations on discharges as necessary to meet applicable water quality standards.

Categorical pretreatment standards for existing indirect dischargers, unlike effluent limitations guidelines applicable to direct dischargers, are directly enforceable and must specify a time for compliance not to exceed three years under CWA section 307(b)(1) (33 U.S.C. 1317(b)(1)). Under EPA's General Pretreatment Regulations for Existing and New Sources (40 CFR part 403), POTWs with flows in excess of 5 million gallons per day (MGD) must develop pretreatment programs meeting prescribed conditions. These POTWs have the legal authority to require compliance with applicable pretreatment standards and control the introduction of pollutants to the POTW through permits, orders, or similar means. POTWs with approved pretreatment programs act as the control authorities for their industrial users. Among the responsibilities of the control authority are the development of the specific discharge limitations for the POTW's industrial users. Because pollutant discharge limitations in categorical pretreatment standards may be expressed as concentrations or mass limitations, in many cases, the control authority must convert the pretreatment standards to limitations applicable to a specific industrial user and then include these in POTW permits or another control instrument.

New source direct dischargers must comply with the new source performance standards (NSPS) of this rule when they commence discharging MPP process wastewater. CWA section 306 (33 U.S.C. 1316) states that NSPS are effective upon promulgation. While arguably this language could mean that they are also enforceable upon

promulgation, over the decades of CWA implementation, NSPS for direct dischargers have been implemented through NPDES permits. For facilities that are considered new sources, the CWA provides for a protection period from any more stringent technology-based standards. The protection period is generally 10 years from the completion of construction. See CWA section 306(d) (33 U.S.C. 1316(d) and 40 CFR 122.29(d)). Thus, any source that commenced construction before promulgation of future NSPS will not be subject to any more stringent standard of performance until the protection period identified in 40 CFR 122.29(d) expires.

Facilities that discharge wastewater from operations from more than one category may need to comply with limitations and standards from multiple subcategories. For these facilities, permit writers would use the “building block approach” based on production or wastewater discharge flow to combine the sets of limitations into one final effluent limitation in the facility’s permit. In cases where one part of the wastewater comes from operations with no national technology-based limitations, the permit writer must first establish BPJ limitations for this portion of the wastewater, and then combine these with any applicable national technology-based limitations using the building block approach. However, first processing subcategories (subcategories A, B, C, D, and K) are defined to include wastewater discharges from further processing and rendering operations at the same facility. These facilities will only be regulated by the relevant first processing subcategory or subcategories.

In May 2000, EPA promulgated a regulation streamlining the NPDES regulations (*Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two*, 65 FR 30886; May 15, 2000) which includes a monitoring waiver for direct dischargers subject to effluent guidelines. Direct discharge facilities may request a reduction in sampling a guideline-limited pollutant if that discharger “has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger” (65 FR 30908; 40 CFR 122.44). EPA noted in the preamble to the final NPDES streamlining rule that the Agency is granting a waiver from monitoring requirements but not a waiver from the limit. In addition, the provision does not waive monitoring for

any pollutants for which there are limits based on water quality standards. The waiver for direct dischargers lasts for the term of the NPDES permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted with the application for a reissued permit or a request for modification of a reissued permit. On receiving authorization from their NPDES permitting authority, direct discharge facilities covered by any effluent guidelines (including any final rule promulgated for this category) may use the monitoring waiver contained in the NPDES streamlining final rule.

The CWA requires application of effluent limitations established pursuant to section 301 or the pretreatment standards of section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. The Agency has established administrative mechanisms to provide an opportunity for relief from the application of the national effluent limitations guidelines for categories of existing sources for toxic, conventional, and nonconventional pollutants.

EPA may develop, with the concurrence of the State, effluent limitations or standards different from the otherwise applicable requirements for an individual existing discharger if it is fundamentally different with respect to factors considered in establishing the effluent limitations or standards applicable to the individual discharger. Such a modification is known as a Fundamentally Different Factor (FDF) variance. FDF variances are not available for new sources (*DuPont v. Train*, 430 U.S. 112 (1977)).

EPA, in its initial implementation of the effluent guidelines program, provided for the FDF modifications in regulations, which were variances from the BPT effluent limitations, BAT limitations for toxic and nonconventional pollutants, and BCT limitations for conventional pollutants for direct dischargers. FDF variances for toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court in *Chemical Manufacturers Association v. Natural Resources Defense Council*, 470 U.S. 116, 124 (1985).

Subsequently, in the Water Quality Act of 1987, Congress added a new section to the CWA—section 301(n) (33 U.S.C. 1311(n)). This provision explicitly authorizes modifications of the otherwise applicable BAT effluent limitations, if a discharger is fundamentally different with respect to

the factors specified in CWA section 304 (other than cost) from those considered by EPA in establishing the effluent limitations. CWA section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of a FDF variance must be based solely on (1) Information submitted during rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have a reasonable opportunity to submit during the rulemaking. The alternate limitation must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation.

EPA regulations further detail the substantive criteria used to evaluate FDF variance requests for direct dischargers. 40 CFR 125.31(d) and 40 CFR 403.13(d) identify six factors (e.g., volume of process wastewater, age and size of a discharger’s facility) that may be considered in determining if a discharger is fundamentally different. The Agency must determine whether, based on one or more of these factors, the discharger in question is fundamentally different from the dischargers and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., inability to install equipment within the time allowed or a discharger’s ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(c), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA’s regulations at 40 CFR 125.32(b) and 403.13 impose this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant’s permit that are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines.

In practice, very few FDF variances have been granted for past ELGs.

CWA section 301(c) (33 U.S.C. 1311(c)) authorizes a variance from the otherwise applicable BAT effluent guidelines for nonconventional pollutants due to economic factors. The request for a variance from effluent limitations developed from BAT guidelines must normally be filed by the discharger during the public notice period for the draft permit. 40 CFR 122.21(m)(2) specifies that section 301(c) variances must be filed within 270 days of promulgation of an ELG. Specific guidance for this type of variance is provided in *Draft Guidance for Application and Review of Section 301(c) Variance Requests* (USEPA, 1984).⁵²

CWA section 307(b)(1) (33 U.S.C. 1317(b)) establishes a discretionary program for POTWs to grant “removal credits” to their indirect dischargers. Removal credits are a regulatory mechanism by which industrial users may discharge a pollutant in quantities that exceed what would otherwise be allowed under an applicable categorical pretreatment standard because it has been determined that the POTW to which the industrial user discharges consistently treats the pollutant. EPA has promulgated removal credit regulations as part of its pretreatment regulations (40 CFR 403.7). These regulations provide that a POTW may give removal credits if prescribed requirements are met. The POTW must apply to and receive authorization from the Approval Authority. To obtain authorization, the POTW must demonstrate consistent removal of the pollutant for which approval authority is sought. Furthermore, the POTW must have an approved pretreatment program. Finally, the POTW must demonstrate that granting removal credits will not cause the POTW to violate applicable federal, State, or local sewage sludge requirements or the POTW’s NPDES permit limits and conditions (40 CFR 403.7(a)(3)).

The United States Court of Appeals for the Third Circuit interpreted the CWA as requiring EPA to promulgate the comprehensive sewage sludge regulations pursuant to CWA section 405(d)(2)(A)(ii) (33 U.S.C. 1345(d)(2)(A)(ii)) before any removal credits could be authorized (*NRDC v. EPA*, 790 F.2d 289, 292 (3d Cir., 1986); cert. denied., 479 U.S. 1084 (1987)). Congress made this explicit in the Water Quality Act of 1987, which provided that EPA could not authorize any

removal credits until it issued the sewage sludge use and disposal regulations. On February 19, 1993, EPA promulgated *Standards for the Use or Disposal of Sewage Sludge*, which are codified at 40 CFR part 503. EPA interprets the Court’s decision in *NRDC v. EPA* as only allowing removal credits for a pollutant if EPA has either regulated the pollutant in Part 503 or established a concentration of the pollutant in sewage sludge below which public health and the environment are protected when sewage sludge is used or disposed.

The 40 CFR part 503 sewage sludge regulations allow four options for sewage sludge disposal: (1) Land application for beneficial use, (2) placement on a surface disposal unit, (3) firing in a sewage sludge incinerator, and (4) disposal in a landfill which complies with the municipal solid waste landfill criteria in section 40 CFR 503.4. Because pollutants in sewage sludge are regulated differently depending upon the use or disposal method selected, under EPA’s pretreatment regulations the availability of a removal credit for a particular pollutant is linked to the POTW’s method of using or disposing of its sewage sludge. The regulations provide that removal credits may be potentially available for the following pollutants:

(1) If POTW applies its sewage sludge to the land for beneficial uses, disposes of it in a surface disposal unit, or incinerates it in a sewage sludge incinerator, removal credits may be available for the pollutants for which EPA has established limits in 40 CFR part 503. EPA has set ceiling limitations for nine metals in sludge that is land applied, three metals in sludge that is placed on a surface disposal unit, and seven metals and 57 organic pollutants in sludge that is incinerated in a sewage sludge incinerator.

(2) Additional removal credits may be available for sewage sludge that is land applied, placed in a surface disposal unit, or incinerated in a sewage sludge incinerator, so long as the concentration of these pollutants in sludge do not exceed concentration levels established in Part 403, Appendix G, Table II. For sewage sludge that is land applied, removal credits may be available for an additional two metals and 14 organic pollutants. For sewage sludge that is placed on a surface disposal unit, removal credits may be available for an additional seven metals and 13 organic pollutants. For sewage sludge that is incinerated in a sewage sludge incinerator, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill that meets the criteria of 40 CFR part 258, removal credits may be available for any pollutant in the POTW’s sewage sludge (40 CFR part 403.7(a)(3)(iv)(C)).

B. Reporting and Recordkeeping Requirements

The proposed effluent limitations include pollutants not previously regulated in ELGs for direct and indirect MPP dischargers. NPDES permit writers and pretreatment control authorities must establish requirements for regulated MPP facilities to monitor their effluent to ensure that they are complying with the effluent limitations and pretreatment standards. As specified at 40 CFR 122.41, 122.44, and 122.48, all NPDES permits must specify requirements for using, maintaining, and installing (if appropriate) monitoring equipment; monitoring type, intervals, and frequencies that will provide representative data; analytical methods; and reporting and recordkeeping. In addition, 40 CFR 122.42 outlines additional conditions applicable to specified categories of NPDES permits. For example, during the NPDES permit cycle, POTWs must provide adequate notice to the permitting authority of any new introduction of pollutants into the POTW from an indirect discharger which otherwise would be subject to CWA section 301 or 306 if it were directly discharging those pollutants; any substantial change in the volume or character of pollutants being introduced into the POTW; and any anticipated impact to the POTW final discharge (40 CFR 142.2(b)).

The NPDES program requires permittees (with certain specific exceptions) to monitor for limited pollutants and report data at least once a year. 40 CFR 122.44(i)(2). Industrial users and POTWs have similar reporting requirements as specified at 40 CFR 403.12. The general pretreatment regulations at 40 CFR part 403 require significant industrial users (which includes all industrial users subject to Categorical Pretreatment Standards, with certain specific exceptions) to monitor for limited pollutants and report data in June and December, unless required more frequently in the Pretreatment Standard or by the control authority or approval authority (40 CFR 403.12(e)). POTW control authorities are also required by 40 CFR 403.8(f) to conduct annual inspections and sampling to independently assess compliance with standards.

⁵² <https://www3.epa.gov/npdes/pubs/OWM0469.pdf>.

EPA does not plan to promulgate specific monitoring requirements or monitoring frequencies in the MPP rule. Therefore, NPDES permit writers may establish monitoring requirements and monitoring frequencies at their discretion subject to the requirements of the NPDES regulations. Likewise, the control authority for indirect dischargers may establish monitoring requirements and monitoring frequencies at their discretion subject to the requirements of the pretreatment program regulations and in compliance with approved State and POTW program procedures. The Agency notes, however, that since the PRA requires it to estimate the incremental reporting and recordkeeping burden associated with any new regulation, in developing the proposed Part 432 limitations it considered a monthly sampling frequency for purposes of estimating this burden. EPA expects that facilities properly operating and maintaining the wastewater treatment technology system will be able to comply with the monthly average limitation/standard when they sample at the assumed monthly monitoring frequency, although compliance is required regardless of the number of samples analyzed and averaged in a month. EPA recommends that permitting authorities require monitoring samples at some regular, predetermined frequency. If a facility has difficulty complying with the standards on an ongoing basis, the facility should improve its equipment, operations, and/or maintenance.

Facilities are required to use analytical methods specified in or approved under 40 CFR part 136 for compliance monitoring (40 CFR 122.41(j)(4), 403.12(g)(3)). Of note, Part 136 requires facilities to collect grab samples for oil & grease. In developing the Part 432 oil & grease limitations, EPA generally collected six grab samples in a 24-hour monitoring day. For pH, sample types can range from a one-time grab sample during a monitoring day to continuous sampling throughout a monitoring day where pH is a critical aspect of the wastewater treated or the wastewater treatment operation.

C. Applicability of PSNS/NSPS Requirements

In 2004, EPA promulgated NSPS/PSNS for certain discharges from new units. Regardless of the outcome of the current rulemaking, those units that are currently subject to the 2004 NSPS/PSNS will continue to be subject to such standards. In addition, EPA is proposing to clarify in the text of the regulation that, assuming the Agency promulgates

BAT/PSES requirements as part of the current rulemaking, units to which the 2004 NSPS/PSNS apply will also be subject to any newly promulgated BAT/PSES requirements because they will be existing sources with respect to such new requirements.

XVI. Related Acts of Congress, E.O.'s and Agency Initiatives

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a “significant regulatory action”, as defined under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Accordingly, EPA submitted this action to OMB for E.O. 12866 review. Documentation of any changes made in response to the E.O. 12866 review is available in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, “Benefit and Cost Analysis for Proposed Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category” EPA 821-R-23-013, is also available in the docket and is briefly summarized in Section VIII.

B. Paperwork Reduction Act

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2701.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This Information Collection Request (ICR) seeks approval of the information requirements in the Proposed Rule for the Effluent Guidelines and Standards for the Meat and Poultry Products (MPP) Category. EPA is proposing revisions to Best Available Technology Economically Achievable (BAT), as well as new Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS) under the Clean Water Act (CWA) for MPP facilities. Under the proposed BAT, certain MPP facilities that discharge wastewater directly to waters of the U.S. would be required to monitor for additional pollutants, such as phosphorus. Under the proposed PSES/PSNS, certain MPP facilities that discharge wastewater into publicly owned treatment works (POTWs) would

be required to control the discharge of conventional pollutants. The proposed rule would require all affected direct discharging MPP facilities to meet limits for nitrogen, and phosphorus before discharging wastewater to surface waters. These facilities are already required to monitor for nitrogen. The proposed rule would require all affected indirect MPP facilities to meet limits for biological oxygen demand (BOD), oil and grease, and total suspended solids (TSS) before discharging wastewater to POTWs through the use of wastewater treatment technologies and Best Management Practices (BMPs).

The users of the data would be MPP facilities, State and local regulatory authorities, EPA, and, perhaps most importantly, the general public. Specifically for indirect dischargers, the users of the data would be MPP facilities and their Control Authorities. By establishing categorical pretreatment standards for the MPP category in 40 CFR part 432, MPP dischargers to POTWs would become subject to certain reporting requirements in 40 CFR part 403. These include a requirement to submit a baseline monitoring report, 90-day compliance report and on-going monitoring and reporting requirements including results of discharge sampling. Reports submitted to the Permitting or Control Authority may contain confidential business information. However, EPA does not consider the specific information being requested by the rule to be typical of confidential business or personal information. If a respondent does consider this information to be of a confidential nature, the respondent may request that such information be treated as such. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

Respondents/affected entities: Entities affected by this information collection request are Meat and Poultry Products facilities and Control Authorities.

The Meat and Poultry Products (MPP) point source category includes facilities “engaged in the slaughtering, dressing and packing of meat and poultry products for human consumption and/or animal food and feeds. Meat and poultry products for human consumption include meat and poultry from cattle, hogs, sheep, chickens, turkeys, ducks and other fowl as well as sausages, luncheon meats and cured, smoked or canned or other prepared meat and poultry products from purchased carcasses and other materials. Meat and poultry products for animal food and feeds include animal oils, meat meal and facilities that render

grease and tallow from animal fat, bones and meat scraps" (See 40 CFR 432.1).

Control Authorities have regulatory oversight for pollutant discharges to POTWs. The "Control Authority" refers to the POTW if the POTW has an approved pretreatment program, or the Approval Authority if it has not been approved, which may be the State or EPA. By establishing categorical pretreatment standards for the MPP category, control authorities would be subject to certain oversight requirements in 40 CFR part 403.

Respondent's obligation to respond: Mandatory (40 CFR 122.41, 122.44 and 122.48, and 40 CFR parts 403 and 432.)

Estimated number of respondents: 485 meat and poultry product facilities and 360 control authorities

Frequency of response: EPA is assuming a one-time burden per facility to develop baseline and 90-day compliance reports and review production as well as monthly data reporting.

Total estimated burden: 15,133 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$2,981,260 (per year), includes \$1,339,530 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. OMB must receive comments no later than February 22, 2024.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this

action are meat and poultry products facilities that engage in meat and/or poultry slaughter, further processing, and/or rendering. The proposed rule would not affect any current small governmental jurisdictions or not-for-profit organizations. Only facilities that exceed the subcategory-specific production thresholds would be subject to this rule. The Agency has determined that under the proposed Option 1, of the estimated 3,233 small businesses that own MPP facilities, 96 small entities may experience an impact. Of the 96 potentially regulated small entities, no entities are estimated to incur annualized post-tax compliance costs greater than 3 percent of revenues; only one entity is estimated to incur compliance costs between 1 to 3 percent of revenues; 95 small entities are estimated to incur compliance costs of less than 1 percent of revenues. Under the most stringent option (Option 3), 263 small entities may experience an impact: 4 entities are estimated to incur costs greater than 3 percent of revenues, 11 entities between 1 to 3 percent, and 248 less than 1 percent. These results are summarized in Table XVI–2, below (same as Table VIII–12). Details of this analysis are presented in Section VIII and the RIA found in the docket.

TABLE XVI–2—SMALL FIRM-LEVEL CTR SCREENING ANALYSIS RESULTS

Entity type	Total # of small firms	Number small firms with a ratio of				Percent of small firms with a ratio of			
		0% ^a	>0 and <1%	≥1 and <3%	≥3%	0% ^a	>0 and <1%	≥1 and <3%	≥3%
Option 1	3,233	3,137	95	1	0	97	3	0.0	0.0
Option 2	3,233	3,137	94	1	1	97	3	0.0	0.0
Option 3	3,233	2,970	248	11	4	92	8	0.0	0.0

^a These entities own only facilities that already meet discharge requirements for the wastestreams addressed by a given regulatory option and are therefore not estimated to incur any compliance technology costs.

Although this proposed rule would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The proposed rule includes subcategory-specific production thresholds that would have less stringent effluent limitations for smaller production facilities. Facilities under certain production thresholds may have no national effluent limitations.

Although not required by the RFA to convene a Small Business Advocacy Review (SBAR) Panel because the EPA has now determined that this proposal would not have a significant economic impact on a substantial number of small entities, the EPA originally convened a panel to obtain advice and recommendations from small entity representatives potentially subject to

this rule's requirements. The 5 panel recommendations are briefly summarized here, and a copy of the SBAR Panel Report is included in the docket for this rulemaking (USEPA. 2023. DCN MP00347). The Panel recommended EPA: (1) Exclude small and very small firms from regulation and take public comment on production thresholds so as not to cause substantial economic hardship on small entities; (2) Set regulations based on wastewater flows as an alternative to production thresholds; (3) Consider and take comment on a longer or flexible timeline for small entities to meet proposed regulations; (4) Consider and take comment on conditional limits for MPP facilities that discharge to POTWs that already have nitrogen and phosphorus treatment capabilities equivalent to the proposed rule in place; (5) Publish compliance guides to help

facilities determine rule applicability and requirements and to take comment on what information would be beneficial for small entities.

Although not required by the RFA, the EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could minimize that impact. The IRFA describes why this action is being considered, the objectives and legal basis for the proposed rule, the small entities to which the proposed rule applies, the compliance requirements, other relevant Federal rules, potential economic impacts on small entities, how regulatory options developed by EPA served to mitigate the impact of the regulatory options on small entities, and uncertainties and limitations. The

complete IRFA is available for review in the docket.

In accordance with RFA requirements and as it has consistently done in developing effluent limitations guidelines and standards, EPA subsequently assessed whether the proposed regulatory options would have “a significant impact on a substantial number of small entities” (SISNOSE). EPA performed this assessment for each of the proposed options and as described above certified no SISNOSE.

D. Unfunded Mandates Reform Act

This action contains a federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of \$100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA has prepared a written statement required under section 202 of UMRA. The statement is included in the docket for this action and briefly summarized here.

An industrial user (IU) is a nondomestic source of indirect discharge into a POTW, and in this rule is the meat and poultry products facility discharger. The Control Authority may be the POTW, the State, or EPA, depending on whether the POTW or the State is approved by EPA to administer the pretreatment program. The Control Authority is the POTW in cases where the POTW has an approved pretreatment program. The Control Authority is the State, where the POTW has not been approved to administer the pretreatment program, but the State has been approved. The Control Authority is EPA where neither the POTW nor the State have been approved to administer the pretreatment program. The Approval Authority is the State (Director) in an NPDES authorized State with an approved pretreatment program, the EPA regional administrator in a non-NPDES authorized State, or NPDES State without an approved State pretreatment program.

Typically, an IU is responsible for demonstrating compliance with pretreatment standards by performing self-monitoring, submitting reports and notifications to its Control Authority, and maintaining records of activities associated with its discharge to the POTW. The Control Authority is the regulating authority responsible for implementing and enforcing pretreatment standards. The General Pretreatment Regulations require certain minimum oversight of IUs by Control Authorities. The required minimum oversight includes receipt and analysis of reports and notifications submitted by IUs, random sampling and analyzing

effluent from IUs, and conducting surveillance activities to identify occasional and continuing noncompliance with pretreatment standards. The Control Authority is also responsible for taking enforcement action as necessary.

For IUs that are designated as Significant Industrial Users (SIUs),⁵³ Control Authorities must inspect and sample the SIU effluent annually, review the need for a slug control plan, and issue a permit or equivalent control mechanism. IUs subject to categorical pretreatment standards are referred to as Categorical Industrial Users (CIUs) and General Pretreatment Regulations define SIU to include CIUs.

The Approval Authority is responsible for ensuring that POTWs comply with all applicable pretreatment program requirements. Among other things, the Approval Authority receives annual pretreatment reports from the Control Authority. These reports must identify which IUs are CIUs. In accordance with 40 CFR 122.44(j)(1) all POTWs are required to “identify, in terms of character and volume of pollutants, any SIU” and include them on their NPDES Application form, 122.21(j)(6). Approved POTW Control Authorities have legal authority and procedures to identify and control such IUs (40 CFR 403.8(f)(1) & (2)). Therefore, this proposed MPP rule requires little extra burden on Control Authorities to identify the subset of SIUs that are subject to categorical pretreatment standards and to apply the requirements to them.

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. E.O. 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

⁵³ SIUs are defined as Industrial Users subject to Categorical Pretreatment Standards, or those that: discharge an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard. See 40 CFR 403.3 for details.

F. E.O. 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in E.O. 13175. It would not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes as specified in E.O. 13175. EPA is not aware of any facility subject to these proposed ELGs that is owned by Tribal governments. Thus, E.O. 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with Tribal officials during the development of this action. EPA initiated consultation and coordination with federally recognized Tribal governments in January 2023. EPA shared information about the Meat and Poultry Products effluent guidelines rulemaking (MPP ELG) with all federally recognized Tribes by sending a letter and detailed plan describing the rulemaking, the potential impact to Tribes, and opportunities for Tribal involvement. EPA performed a proximity-based screening analysis to determine which Tribes and Tribal lands are the most likely to be impacted by MPP industrial activity and/or changes to the MPP ELG. Tribes that were identified as being in proximity⁵⁴ to either 10 or more MPP facilities or a waterbody potentially impacted by MPP wastewater discharge,⁵⁵ were notified of these screening results to promote awareness. EPA continued this government-to-government dialogue by hosting two identical listening sessions as webinars on February 6th and 13th, 2023, where Tribal representatives were invited to participate in further discussions about the rulemaking process and objectives, with a focus on identifying specific ways the rulemaking may affect Tribes. The consultation process ended on March 10th, 2023. No Tribal governments requested direct government-to-government consultations, and EPA received no written comments from any Tribes.

G. E.O. 13045: Protection of Children From Environmental Health Risks and Safety Risks

E.O. 13045 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation

⁵⁴ Within 5 miles.

⁵⁵ Within 50 miles of a 25-mile reach downstream of an MPP wastewater outfall.

on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to E.O. 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

EPA reviewed epidemiological studies to determine whether exposures to pollutants in MPP wastewater are associated with disproportionate health risks among children. EPA identified evidence of disproportionate health risks among children from exposure to nitrates, which can result from the discharge of nitrogen from MPP facilities. Research has shown an association between exposure to nitrates in drinking water and increased incidence of birth defects and methemoglobinemia (“blue baby syndrome”) in children (Fears. 2021),⁵⁶ (Baskin-) ⁵⁷ EPA analyzed changes in total nitrogen (TN) loadings from MPP facilities under the proposed regulation and found that the regulatory options all result in estimated reductions relative to the baseline in TN loadings into downstream receiving waters. Additionally, compared to the baseline, EPA found that modeled regulatory Option 3 resulted in reductions in average nitrate concentrations in all three case study watersheds. This result suggests that nitrate levels will decrease in source waters for intakes of drinking water systems downstream of MPP wastewater discharge. While reducing nitrogen species in source water may reduce the amount and cost of treatment needed, EPA does not anticipate changes in nitrate and nitrite concentrations in drinking water. This is because public water systems must meet the maximum contaminant level (MCL) in water for nitrates and nitrite (10 mg/L and 1 mg/L, respectively). These MCLs are equal to the Maximum Contaminant Level Goals (MCLGs) and were specifically based on levels considered low enough to protect infants from methemoglobinemia. The risk to children in households whose water supply comes from public water systems is therefore low. Because of this as well as data limitations, EPA did not

quantify resulting changes in birth defects and methemoglobinemia but expects children to benefit from a reduced risk of these health impacts from lower nitrogen concentrations in source waters.

Nutrient concentrations in private well water may be impacted by any increase in land application of sludges expected to occur under proposed rule options. Because land application locations and frequencies change over time, EPA was not able to estimate potential impacts of this rulemaking on private well water quality, and therefore the health of children in affected households. Taken together, it is underdetermined how children may be impacted under the implementation of this rule.

H. E.O. 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a significant energy action under E.O. 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. As discussed in Section X, EPA estimates that compliance with this proposed rule would create a small increase in nationwide energy consumption for MPP facilities. EPA estimates an approximate increase of 104,208 MWh per year for wastewater treatment. By comparison, electric power generation facilities generated 4,108 billion megawatt hours of electric power in the United States in 2021 (EIA. 2021).⁵⁸ Additional energy requirements for EPA’s selected options are acceptable (*i.e.*, significantly less than 0.001 percent of national requirements).

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. E.O. 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 14096 Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice (EJ) concerns. Literature on the MPP industry showed that facilities are commonly (Winders and Abrell.

2021)⁵⁹ in rural areas, often with multiple large facilities located in the same county (Burkhart et al. 2018).⁶⁰ Exposure to pollutants released by facilities through air, water, and solid waste (Baskin-Graves et al. 2019) cause health effects in communities near or downstream of facilities (Hall et al. 2021).⁶¹ near MPP facilities have been documented to have greater proportions of vulnerable population groups and potential exposures to environmental stressors than the average community. The results of EPA’s proximity analysis support this finding. EPA determined that Census block groups (CBGs) located within one mile of an MPP facility had larger proportions of people identifying as Asian, Black, and or Hispanic, and more low-income individuals than the national average.⁶² Relevant indicators of pollution exposures expected to be impacted under proposed rule options (PM_{2.5}, diesel PM, and traffic proximity) also exceeded the 50th percentile nationally on average for these communities. EPA also assessed community demographics along downstream receiving waters⁶³ of MPP facilities and areas served by public drinking water systems sourcing water from receiving waters. These analyses showed that CBGs served by impacted drinking water systems have greater proportions of Black/African American people than the national average, while CBGs within one mile of a downstream receiving waters have a larger proportion of low-income individuals than the national average.⁶⁴ EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. Under all proposed regulatory options, the extent of MPP discharge impacts on

⁵⁹ Winders, D.J., & Abrell, E. 2021. *Slaughterhouse Workers, Animals, and the Environment: The Need for a Rights-Centered Regulatory Framework in the United States That Recognizes Interconnected Interests*. Health and Human Rights Journal. Vol. 23: No. 2.

⁶⁰ Burkhart, K., Bernhardt, C., Pelton, T., Schaeffer, E., and Phillips, A. 2018. *Water Pollution from Slaughterhouses*. The Environmental Integrity Project. <https://earthjustice.org/>.

⁶¹ Hall, J., Galarraga, J., Berman, I., Edwards, C., Khanjar, N., Kavi, L., Murray, R., Burwell-Naney, K., Jiang, C., & Wilson, S. 2021. *Environmental injustice and industrial chicken farming in Maryland*. International Journal of Environmental Research and Public Health, 18(21). <https://doi.org/10.3390/ijerph182111039>.

⁶² The national average of people identifying as Asian, Black, and/or Hispanic are 5.6, 12.2, and 18.4 percent, respectively, and is 29.8 percent for individuals considered to be of low-income status. (ACS 2017–2021).

⁶³ Within 25 river miles of an MPP process wastewater outfall.

⁶⁴ National averages are derived from the five-year 2017–2021 American Community Survey.

⁵⁶ Fears, Darryl. April 13, 2021. *A Poultry Plant, Years of Groundwater Contamination And, Finally, A Court Settlement*. The Washington Post.

⁵⁷ Leah Baskin-Graves, Haley Mullen, Aaron Aber, Jair Sinisterra, Kamran Ayub, Roxana Amaya-Fuentes, and Sacoby Wilson. 2019. *Rapid Health Impact Assessment of A Proposed Poultry Processing Plant in Millsboro, Delaware*. International Journal of Environmental Research and Public Health, Vol. 16, Issue 3429.

⁵⁸ U.S. Energy Information Administration. 2021. *Electric Power Annual Report*. www.eia.gov/electricity/annual.

drinking water sources decreases compared to the baseline, therefore reducing impacts to these drinking water distribution systems and the people served by them. The drinking water systems predicted to have improved intake water quality under the regulatory options evaluated serve an increasing fraction of the population identifying as Black/African American relative to baseline under preferred option 1 and option 2, but a decreasing fraction under option 3. However, this percentage exceeds the national average under all options. Additionally, low-income individuals differentially benefit from improved drinking water resources under all regulatory options evaluated. When considering other analyses, such as the distribution of impacts to communities fishing in downstream receiving waters, the regulatory options do not create disproportionate or adverse effects relative to the baseline. For information regarding the distribution of anticipated benefits and a discussion of outreach and public engagement efforts, refer to Section XIII of this preamble. The information supporting this Executive Order review is contained in section 7 of the Environmental Assessment document, which is available in the public docket.

Appendix A to the Preamble: Definitions, Acronyms, and Abbreviations Used in This Preamble

The following acronyms, abbreviations, and terms are used in this preamble. These terms are provided for convenience to the reader, and they are not regulatory definitions with the force or effect of law, nor are they to be used as guidance for implementation of this proposed rule.

Administrator. The Administrator of the U.S. Environmental Protection Agency.

Agency. U.S. Environmental Protection Agency.

BAT. Best Available Technology economically achievable, as defined by CWA sections 301(b)(2)(A) and 304(b)(2)(B).

BCA. Benefit Cost Analysis.

BCT. The best control technology for conventional pollutants, applicable to discharges of conventional pollutants from existing industrial point sources, as defined by section 304(b)(4) of the CWA.

Bioaccumulation. General term describing a process by which chemicals are taken up by an organism either directly from exposure to a contaminated medium or by consumption of food containing the chemical, resulting in a net accumulation of the chemical over time by the organism.

BMP. Best management practice.

BOD₅. Biological oxygen demand measured over a five-day period.

BPJ. Best Professional Judgement.

BPT. The best practicable control technology currently available, as defined by CWA sections 301(b)(1) and 304(b)(1).

CBI. Confidential business information.

CFR. Code of Federal Regulations.

CWA. Clean Water Act; The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended, e.g., by the Clean Water Act of 1977 (Pub. L. 95-217) and the Water Quality Act of 1987 (Pub. L. 100-4).

CWA Section 308 Questionnaire. A questionnaire sent to facilities under the authority of section 308 of the CWA, which requests information to be used in the development of national effluent limitations guidelines and standards.

Conventional Pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand, total suspended solids, fecal coliform, and pH, and any additional pollutants defined by the Administrator. The Administrator designated oil & grease as an additional conventional pollutant on July 30, 1979. 40 CFR 401.16.

DAF. Dissolved Air Flotation.

Daily Discharge. The discharge of a pollutant measured during any calendar day or any 24-hour period that reasonably represents a calendar day.

Denitrification. Nitrite and nitrate are reduced by heterotrophic bacteria into nitrogen gas in anaerobic conditions.

Direct discharge. (1) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source” or (2) any addition of any pollutant or combination of pollutant to waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances that lead into privately owned treatment works. This term does not include addition of pollutants by any “indirect discharger.” 40 CFR 122.2.

DMR. Discharge Monitoring Report

Effluent limitation. Under CWA section 502(11), any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean.

EJA. Environmental Justice Analysis

ELGs. Effluent limitations guidelines and standards.

E.O. Executive Order.

EPA. U.S. Environmental Protection Agency.

Existing Source. For this rule, any source that is not a new source as defined in 40 CFR 122.2.

Facility. Any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the CWA.

Finished Product. The final manufactured product produced on site, including products intended for consumption with no additional processing as well as products intended for further processing, when applicable.

First Processing. Operations which receive live meat animals or poultry and produce a raw, dressed meat or poultry product, either whole or in parts.

FTE. Full Time Equivalent Employee

Further Processing. Operations which utilize whole carcasses or cut-up meat or poultry products for the production of fresh or frozen products, and may include the following types of processing: cutting and deboning, cooking, seasoning, smoking, canning, grinding, chopping, dicing, forming or breeding.

Groundwater. Water that is found in the saturated part of the ground underneath the land surface.

Hazardous Waste. Any waste, including wastewater, defined as hazardous under RCRA, CERCLA, TSCA, or any State law.

HEM. A measure of oil & grease in wastewater by mixing the wastewater with hexane and measuring the oils and greases that are removed from the wastewater with n-hexane. Specifically, EPA Method 1664, see, Table IB.

Indirect discharge. Wastewater discharged or otherwise introduced to a POTW.

Landfill. A disposal facility or part of a facility or plant where solid waste, sludges, or other process residuals are placed in or on any natural or manmade formation in the earth for disposal and which is not a storage pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome or salt bed formation, an underground mine, a cave, or a corrective action management unit.

LTA (Long-Term Average). For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the effluent limitations guidelines and standards in today’s proposed regulation.

Live Weight Killed (LWK). The total weight of the total number of animals slaughtered during a specific time period.

Maximum Monthly Discharge Limitation. The highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during the calendar month divided by the number of “daily discharges” measured during the month.

Meat. The term “meat” includes all animal products from cattle, calves, hogs, sheep, lambs, horses, goats and exotic livestock (e.g., elk, buffalo, deer) etc., except those defined as Poultry for human consumption. This category may include certain species not classified as “meat” by USDA FSIS and that may or may not be under USDA FSIS voluntary inspection.

MPP. Meat and Poultry Products.

Minimum Level. The level at which an analytical system gives recognizable signals and an acceptable calibration point.

Mortality. Death rate or proportion of deaths in a population.

NAICS. North American Industry Classification System.

Non-Conventional Pollutants. Pollutants that are neither conventional pollutants nor toxic/priority pollutants.

Non-Water Quality Environmental Impact. Deleterious aspects of control and treatment technologies applicable to point source category wastes, including, but not limited to air pollution, noise, radiation, sludge and solid waste generation, and energy used.

NPDES. National Pollutant Discharge Elimination System.

NSPSs. New Source Performance Standards.

Outfall. The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters.

Point source. Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. The term does not include agricultural stormwater discharges or return flows from irrigated agriculture. *See* CWA section 502(14), 33 U.S.C. 1362(14); 40 CFR 122.2.

Pollutants of Concern (POCs). Pollutants commonly found in meat and poultry processing wastewaters. Generally, a chemical is considered as a POC if it was detected in untreated process wastewater at 5 times a baseline value in more than 10% of the samples.

Poultry. Broilers, other young chickens, hens, fowl, mature chickens, turkeys, capons, geese, ducks, exotic poultry (e.g., ostriches), and small game such as quail, pheasants, and rabbits. This category may include species not classified as “poultry” by USDA FSIS and that may or may not be under USDA FSIS voluntary inspection.

POTW. Publicly owned treatment works. Any device or system owned by a State or municipality that is used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature. These include sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. *See* CWA section 212, 33 U.S.C. 1292; 40 CFR 122.2, and 403.3.

Priority Pollutant. One hundred twenty-six compounds that are a subset of the 65 toxic pollutants and classes of pollutants outlined pursuant to section 307(a) of the CWA. They are listed at 40 CFR part 423 Appx A.

PSSES. Pretreatment Standards for existing sources of indirect discharges, under section 307(b) of the CWA.

PSNS. Pretreatment standards for new sources under section 307(c) of the CWA.

Raw Material. The basic input materials to a renderer composed of animal and poultry

trimmings, bones, meat scraps, dead animals, feathers and related usable by-products.

RCRA. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*

RO. Reverse osmosis.

RFA. Regulatory Flexibility Act.

SBA. Small Business Administration.

SBR. Sequencing batch reactor.

SBREFA. Small Business Regulatory Enforcement Fairness Act of 1996.

Sediment. Particulate matter lying below water.

SER. Small Entity Representative.

SIC. Standard Industrial Classification (SIC)—A numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility’s primary, secondary, tertiary, etc. economic activities.

Surface water. All waters of the United States, including rivers, streams, lakes, reservoirs, and seas.

TKN. Total Kjeldahl Nitrogen.

Total Nitrogen. Sum of nitrate/nitrite and TKN.

Toxic pollutants. As identified under the CWA, 65 pollutants and classes of pollutants, see 40 CFR 401.15, of which 126 specific substances have been designated priority toxic pollutants. *See* Appendix A to 40 CFR part 423.

TSS. Total suspended solids.

UMRA. Unfunded Mandates Reform Act.

USDA. United States Department of Agriculture.

UV. Ultra-violet light.

Variability factor. Calculated from the concentration data from the facilities using the BAT technologies that incorporates all components of variability including process and wastewater generation, sample collection, shipping, storage, and analytical variability.

List of Subjects in 40 CFR Part 432

Environmental protection; Meat and meat products; Poultry and poultry products; Waste treatment and disposal; Water pollution control.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 432 as follows:

PART 432—MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY

■ 1. The authority for part 432 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

■ 2. Amend § 432.2 by:

■ a. Removing paragraph (d).

■ b. Redesignating paragraph (c) as (d) and adding new paragraph (c).

■ c. Adding paragraphs (l)(7), (m), (n) and (o).

The additions read as follows:

§ 432.2 General definitions.

* * * * *

(c) *E. coli* means the bacterial count, as determined by approved methods of analysis for Parameter 4 in Table 1A in 40 CFR 136.3.

(d) Fecal coliform means the bacterial count, as determined by approved methods of analysis for Parameter 1 in Table 1A in 40 CFR 136.3.

* * * * *

(l)(7) Total Phosphorus means the total of particulate and soluble phosphorus

(m) The term nitrification means oxidation of ammonium salts to nitrites (via Nitrosomas bacteria) and the further oxidation of nitrite to nitrate via Nitrobacter bacteria.

(n) The term denitrification means the microbial process of reducing nitrate and nitrite to gaseous nitrous oxide, and nitrogen gas.

(o) The term phosphorus removal means removal of particulate and soluble phosphorus by biological uptake and solids settling and removal.

Subpart A [Amended]

■ 3. Amend § 432.12(a)(1) by revising the table “Effluent Limitations [BPT]” to read as follows:

§ 432.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)—EFFLUENT LIMITATIONS [BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	0.24	0.12
Fecal Coliform	≥ 50	≥ 22
O&G ³	0.12	0.06

TABLE 1 TO PARAGRAPH (a)—EFFLUENT LIMITATIONS—Continued
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
TSS	0.40	0.20

¹ Pounds per 1,000 lbs (or g/kg) LWK.² MPN or CFU per 100 mL.³ May be measured as hexane extractable material (HEM).

* * * * *

■ 4. Amend § 432.13 by revising the table “Effluent Limitations [BAT]” to read as follows:

§ 432.13 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

* * * * *

TABLE 1 TO § 432.13—EFFLUENT LIMITATIONS
[BAT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
Total Nitrogen	20	12
Total Phosphorus	1.5	0.8
E. Coli	≥ 14	≥ 9

¹ mg/L (ppm).² MPN or CFU per 100 mL.

■ 5. Revise § 432.14 to read as follows:

§ 432.14 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject

to this subpart that slaughters more than 50 million pounds per year (in units of LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must

achieve the following pretreatment standards for existing sources (PSES):

TABLE 1 TO § 432.14—PRETREATMENT STANDARDS FOR EXISTING SOURCES
[PSES]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

■ 6. Amend § 432.15 by revising the introductory text and paragraph (b)(1), and removing paragraph (c) to read as follows:

§ 432.15 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards in §§ 432.15 of this part continue to be subject to those standards. These 2004 new sources are also subject to revised

BPT and BAT effluent limitations specified in § 432.12 and 432.13 of this part (for direct dischargers) or the revised pretreatment standards specified in § 432.14 of this part (for indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:

* * * * *

(b) * * *

(1) In the case of process wastewater associated with the slaughtering of animals on-site or the processing of the carcasses of animals slaughtered on-site, the standards for BOD₅, fecal coliform, O&G, and TSS are the same as the limitations specified in § 432.12(a)(1) and the standards for ammonia (as N) total nitrogen, total phosphorus, and E. coli are as follows:

TABLE 5 TO PARAGRAPH (b)(1)—PERFORMANCE STANDARDS
[NSPS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
Total Nitrogen	20	12

TABLE 5 TO PARAGRAPH (b)(1)—PERFORMANCE STANDARDS—Continued
[NSPS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Total Phosphorus	1.5	0.8
E. Coli	² 14	² 9

¹ mg/L (ppm).² MPN or CFU per 100 mL.

* * * * *

■ 7. Revise § 432.16 to read as follows:

§ 432.16 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that slaughters more than 50 million pounds per year (in units of

LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSNS):

TABLE 1 TO § 432.16—PRETREATMENT STANDARDS FOR NEW SOURCES
[PSNS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1635	1393

¹ mg/L.**Subpart B [Amended]**

■ 8. Amend § 432.22 (a)(1) by revising the table “Effluent Limitations [BPT] table to read as follows:

§ 432.22 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)—EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	0.42	0.21
Fecal Coliform	² 50	² 22
O&G ³	0.16	0.08
TSS	0.50	0.25

¹ Pounds per 1,000 lbs (or g/kg) LWK.² MPN or CFU per 100 mL.³ May be measured as hexane extractable material (HEM).

* * * * *

■ 9. Revise § 432.23 to read as follows:

§ 432.23 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) must achieve the following effluent limitations representing the application of BAT: Limitations for ammonia (as N), total phosphorus, E. coli, and total nitrogen are the same as specified in § 432.13.

■ 10. Revise § 432.24 to read as follows:

§ 432.24 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES): Limitations for BOD₅, TSS, oil and grease are the same as specified in § 432.14.

■ 11. Amend § 432.25 by revising the introductory text and paragraph (b)(1), and removing paragraph (c).

The revisions read as follows:

§ 432.25 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards in this section continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in §§ 432.22 and 432.23 (for direct dischargers) or the revised pretreatment standards specified in § 432.24 (for indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:

* * * * *

(b) * * *

(1) In the case of process wastewater associated with the slaughtering of animals on-site or the processing of the carcasses of animals slaughtered on-site, the standards for BOD₅, fecal coliform, O&G, and TSS are the same as the corresponding limitations specified in § 432.22(a)(1) and the standards for ammonia (as N), total phosphorus, E. coli, and total nitrogen are the same as the limitations specified in § 432.15(b)(1).

* * * * *

■ 12. Revise § 432.26 to read as follows:

§ 432.26 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES): Limitations for BOD₅, TSS, oil and grease are the same as specified in § 432.16.

Subpart C [Amended]

■ 13. Amend § 432.32 (a)(1) by revising the table “Effluent Limitations [BPT]” to read as follows:

§ 432.32 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)—EFFLUENT LIMITATIONS [BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	0.34	0.17
Fecal Coliform	² 50	² 22
O&G ³	0.16	0.08
TSS	0.48	0.24

¹ Pounds per 1,000 lbs (or g/kg) LWK.

² MPN or CFU per 100 mL.

³ May be measured as hexane extractable material (HEM).

* * * * *

■ 14. Revise § 432.33 to read as follows:

§ 432.33 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) must achieve the following effluent limitations representing the application of BAT: the limitations for ammonia (as N), total phosphorus, E. coli, and total nitrogen are the same as specified in § 432.13.

■ 15. Revise § 432.34 to read as follows:

§ 432.34 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES): Limitations for BOD₅, TSS, oil and grease are the same as specified in § 432.14.

■ 16. Amend § 432.35 by revising the introductory text and paragraph (b)(1), and removing paragraph (c) to read as follow:

§ 432.35 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards in §§ 432.35 of this part continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in §§ 432.32 and 432.33 (for direct dischargers) or the revised pretreatment standards specified in § 432.34 (for indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:

* * * * *

(b) * * *

(1) In the case of process wastewater associated with the slaughtering of animals on-site or the processing of the carcasses of animals slaughtered on-site, the standards for BOD₅, fecal coliform, TSS, and O&G are the same as the corresponding limitations specified in § 432.32(a)(1) and the standards for

ammonia (as N), total phosphorus, E. coli, and total nitrogen are the same as the limitations specified in § 432.15(b)(1).

* * * * *

■ 17. Revise § 432.36 to read as follows:

§ 432.36 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES): Limitations for BOD₅, TSS, oil and grease are the same as specified in § 432.16.

■ 18. Amend § 432.42 (a)(1) by revising the table “Effluent Limitations [BPT]” to read as follows:

§ 432.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)—EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅ ²	0.48	0.24
Fecal Coliform	³ 50	³ 22
O&G ⁴	0.26	0.13
TSS ²	0.62	0.31

¹ Pounds per 1,000 lbs (or g/kg) LWK.

² The values for BOD₅ and TSS are for average plants, *i.e.*, plants where the ratio of avg. wt. of processed meat products/avg. LWK is 0.55. Adjustments can be made for high-processing packinghouses operating at other such ratios according to the following equations: lbs BOD₅/1,000 lbs LWK = 0.21 + 0.23 (v - 0.4) and lbs TSS/1,000 lbs LWK = 0.28 + 0.3 (v - 0.4), where v equals the following ratio: lbs processed meat products/lbs LWK.

³ MPN or CFU per 100 mL.

⁴ May be measured as hexane extractable material (HEM).

* * * * *

■ 19. Revise § 432.43 to read as follows:

§ 432.43 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) must achieve the following effluent limitations representing the application of BAT: Limitations for ammonia (as N), total phosphorus, E. coli, and total nitrogen are the same as specified in § 432.13.

■ 20. Revise § 432.44 to read as follows:

§ 432.44 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES): Limitations for BOD₅, TSS, oil and grease are the same as specified in § 432.14.

■ 21. Amend § 432.45 by revising the introductory text and paragraph (b)(1),

and removing paragraph (c) to read as follows:

§ 432.45 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards in §§ 432.45 of this part continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in § 432.42 and 432.43 of this part (for direct dischargers) or the revised pretreatment standards specified in § 432.44 of this part (for indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:

* * * * *

(b) * * *

(1) In the case of process wastewater associated with the slaughtering of animals on-site or the processing of the carcasses of animals slaughtered on-site, the standards for BOD₅, fecal coliform, O&G, and TSS are the same as the corresponding limitations specified in § 432.22(a)(1) and the standards for ammonia (as N), total phosphorus, E. coli, and total nitrogen are the same as

the limitations specified in § 432.15(b)(1).

* * * * *

■ 22. Revise § 432.46 to read as follows:

§ 432.46 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that slaughters more than 50 million pounds per year (in units of LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES): Limitations for BOD₅, TSS, oil and grease are the same as specified in § 432.16.

Subpart F [Amended]

■ 23. Amend § 432.62 by revising paragraph (b) to read as follows:

§ 432.62 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the following effluent limitations:

TABLE 2 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	0.036	0.018
Fecal Coliform	² 50	² 22
O&G ³	0.012	0.006
TSS	0.044	0.022

¹ Pounds per 1,000 lbs (or g/kg) of finished product.

² MPN or CFU per 100 mL.

³ May be measured as hexane extractable material (HEM).

- * * * * *
- 24. Amend § 432.63 by revising paragraph (b) to read as follows:

§ 432.63 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the following effluent limitations:

TABLE 2 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[BAT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
Total Nitrogen	20	12
Total Phosphorus	1.5	0.8
E. Coli	≥ 14	≥ 9

¹ mg/L (ppm).

² MPN or CFU per 100 mL.

- 25. Revise § 432.64 to read as follows:

§ 432.64 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject

to this subpart that processes more than 50 million pounds per year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve

the following pretreatment standards for existing sources (PSES):

TABLE 1 TO § 432.64—PRETREATMENT STANDARDS FOR EXISTING SOURCES
[PSES]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

- 26. Amend § 432.65 by revising the introductory text and paragraph (b), and removing paragraph (c) to read as follows:

§ 432.65 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards specified in § 432.65 continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in §§ 432.62 and 432.63 (for direct dischargers) or the revised pretreatment

standards in § 432.64 (for indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the limitations for BOD₅, fecal coliform, O&G, and TSS specified in § 432.62(b) and the limitations for ammonia (as N), total

phosphorus, E. coli, and total nitrogen specified in § 432.63(b).

- 27. Revise § 432.66 to read as follows:

§ 432.66 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that processes more than 50 million pounds per year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

TABLE 1 TO § 432.66—PRETREATMENT STANDARDS FOR NEW SOURCES
[PSNS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

Subpart G—Pretreatment Standards for Existing Sources [PSES]

- 28. Amend § 432.72 by revising paragraph (b) to read as follows:

§ 432.72 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the following effluent limitations:

TABLE 2 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	0.56	0.28
Fecal Coliform	≥ 50	≥ 22
O&G ³	0.20	0.10
TSS	0.68	0.34

¹ Pounds per 1,000 lbs (or g/kg) of finished product.² MPN or CFU per 100 mL.³ May be measured as hexane extractable material (HEM).

- * * * * *
- 29. Amend § 432.73 by revising paragraph (b) to read as follows:

§ 432.73 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the following effluent limitations:

TABLE 2 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[BAT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
Total Nitrogen	20	12
Total Phosphorus	1.5	0.8
E. Coli	≥ 14	≥ 9

¹ mg/L (ppm).² MPN or CFU per 100 mL.

- 30. Revise § 432.74 to read as follows:

§ 432.74 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject

to this subpart that processes more than 50 million pounds per year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve

the following pretreatment standards for existing sources (PSES):

TABLE 1 TO § 432.74—PRETREATMENT STANDARDS FOR EXISTING SOURCES
[PSES]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

- 31. Amend § 432.75 by revising the introductory text and paragraphs (b), and removing paragraph (c) to read as follows:

§ 432.75 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards in § 432.75 continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in §§ 432.72 and 432.73 (for direct dischargers) or the revised pretreatment

standards specified in § 432.74 (for indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the limitations for BOD₅, fecal coliform, O&G, and TSS specified in § 432.72(b) and the limitations for ammonia (as N), total phosphorus, E. coli, and total nitrogen specified in § 432.73(b).

- 32. Revise § 432.76 to read as follows:

§ 432.76 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that processes more than 50 million pounds per year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

TABLE 1 § 432.76—PRETREATMENT STANDARDS FOR NEW SOURCES
[PSNS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.**Subpart H [Amended]**

■ 33. Amend § 432.82 by revising paragraph (b) to read as follows:

§ 432.82 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the following effluent limitations:

TABLE 1 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	0.62	0.31
Fecal Coliform	² 50	² 22
O&G ³	0.22	0.11
TSS	0.74	0.37

¹ Pounds per 1,000 lbs (or g/kg) of finished product.² MPN or CFU per 100 mL.³ May be measured as hexane extractable material (HEM).

■ 34. Amend § 432.83 by revising paragraph (b) to read as follows:

§ 432.83 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the following effluent limitations:

TABLE 2 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[BAT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
Total Nitrogen	20	12
Total Phosphorus	1.5	0.8
E. Coli	² 14	² 9

¹ mg/L (ppm).² MPN or CFU per 100 mL.

■ 35. Revise § 432.84 to read as follows:

§ 432.84 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject

to this subpart that processes more than 50 million pounds per year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve

the following pretreatment standards for existing sources (PSES):

TABLE 1 TO § 432.84—PRETREATMENT STANDARDS FOR EXISTING SOURCES
[PSES]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

■ 36. Amend § 432.85 by revising the introductory text and paragraph (b), and removing paragraph (c) to read as follows:

§ 432.85 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards in § 432.85 continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in §§ 432.82 and 432.83 (for direct dischargers) or the revised pretreatment

standards specified in § 432.84 (for indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the limitations for BOD₅, fecal coliform, O&G, and TSS specified in § 432.82(b) and the limitations for ammonia (as N), total

phosphorus, E. coli, and total nitrogen specified in § 432.83(b).

■ 37. Revise § 432.86 to read as follows:

§ 432.86 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that processes more than 50 million pounds per year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

TABLE 1 § 432.86—PRETREATMENT STANDARDS FOR NEW SOURCES
[PSNS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

Subpart I [Amended]

■ 38. Amend § 432.92 by revising paragraph (b) to read as follows:

§ 432.92 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the following effluent limitations:

TABLE 2 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	0.74	0.37
Fecal Coliform	² 50	² 22
O&G ³	0.26	0.13
TSS	0.90	0.45

¹ Pounds per 1000 lbs (or g/kg) of finished product.

² MPN or CFU per 100 mL.

³ May be measured as hexane extractable material (HEM).

* * * * *

■ 39. Amend § 432.93 by revising paragraph (b) to read as follows:

§ 432.93 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(b) Facilities that generate more than 50 million pounds per year of finished products must achieve the following effluent limitations:

TABLE 2 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[BAT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
Total Nitrogen	20	12
Total Phosphorus	1.5	0.8
E. Coli	² 14	² 9

¹ mg/L (ppm).

² MPN or CFU per 100 mL.

- 40. Revise § 432.94 to read as follows:
- § 432.94 Pretreatment standards for existing sources (PSES).**
- Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that processes more than 50 million pounds per year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

TABLE 1 TO § 432.94—PRETREATMENT STANDARDS FOR EXISTING SOURCES [PSES]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

- 41. Amend § 432.95 by revising the introductory text and paragraph (b), and removing paragraph (c) to read as follows:
- § 432.95 New source performance standards (NSPS).**
- Facilities subject to the 2004 new source performance standards in §§ 432.95 of this part continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in § 432.92 and 432.93 of this part (for direct dischargers) or the revised pretreatment standards specified in § 432.94 of this part (for indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:
- * * * * *
- (b) Facilities that generate more than 50 million pounds per year of finished products must achieve the limitations for BOD₅, fecal coliform, O&G, and TSS specified in § 432.92(b) and the limitations for ammonia (as N), total phosphorus, E. coli, and total nitrogen specified in § 432.93(b).
- 42. Revise § 432.96 to read as follows:
- § 432.96 Pretreatment standards for new sources (PSNS).**
- Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that processes more than 50 million pounds per year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

TABLE 1 TO § 432.96—PRETREATMENT STANDARDS FOR NEW SOURCES [PSNS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

Subpart J [Amended]

- 43. Amend § 432.102 by revising paragraph (a) to read as follows:

§ 432.102 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing

point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

TABLE 1 TO PARAGRAPH (a)—EFFLUENT LIMITATIONS [BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	0.34	0.17
Fecal Coliform	² 50	² 22
O&G ³	0.20	0.10
TSS	0.42	0.21

¹ Pounds per 1000 lbs (or g/kg) of raw material.

² MPN or CFU per 100 mL

³ May be measured as hexane extractable material (HEM).

* * * * *

■ 44. Revise § 432.103 to read as follows:

§ 432.103 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided by 40 CFR 125.30 through 125.32, any existing point

source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

TABLE 1 TO § 432.103—EFFLUENT LIMITATIONS
[BAT]

Regulated parameter	Maximum daily	Maximum monthly avg.
Ammonia (as N) ¹	0.14	0.07
Total Nitrogen ²	20	12
Total Phosphorus ²	1.5	0.8
E. Coli	³ 14	³ 9

¹ Pounds per 1000 lbs (g/kg) of raw material (RM).

² mg/L (ppm).

³ MPN or CFU per 100 mL

■ 45. Revise § 432.104 to read as follows:

§ 432.104 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that uses raw material at rates more than 10 million pounds per

year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

TABLE 1 § 432.104—PRETREATMENT STANDARDS FOR EXISTING SOURCES
[PSES]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

■ 46. Amend § 432.105 by revising paragraph (a) and removing paragraph (c) to read as follows:

§ 432.105 New source performance standards (NSPS).

(a) Facilities subject to the 2004 new source performance standards in

§ 432.105 continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in §§ 432.102 and 432.103 (for direct dischargers) or the revised pretreatment standards specified in § 432.104 (for

indirect dischargers). Except as provided in paragraph (c) of this section, any source that is a new source subject to this subpart must achieve the following performance standards:

TABLE 1 TO PARAGRAPH (a)—PERFORMANCE STANDARDS
[NSPS]

Regulated parameter	Maximum daily	Maximum monthly avg.
Ammonia (as N) ¹	0.14	0.07
BOD ₅ ¹	0.18	0.09
E. coli	² 14	² 9
Fecal coliform	² 50	² 22
O&G ^{1 3}	0.10	0.05
Total Nitrogen ⁴	20	12
Total Phosphorus ⁴	1.5	0.8
TSS ¹	0.22	0.11

¹ Pounds per 1000 lbs (or g/kg) of raw material (RM).

² MPN or CFU per 100 mL.

³ May be measured as hexane extractable material (HEM).

⁴ mg/L (ppm).

* * * * *

■ 47. Revise § 432.106 to read as follows:

§ 432.106 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that uses raw material at rates more than 10 million pounds per

year that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

TABLE 1 TO § 432.106—PRETREATMENT STANDARDS FOR NEW SOURCES
[PSNS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

Subpart K [Amended]

■ 48. Revise § 432.112 to read as follows:

§ 432.112 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point

source subject to this subpart that slaughters more than 100 million pounds per year (in units of LWK) must achieve the following effluent limitations representing the application of BPT:

TABLE 1 TO § 432.112—EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
BOD ₅	26	16
Fecal Coliform	² 50	² 22
O&G (as HEM)	14	8.0
TSS	30	20

¹ mg/L (ppm).

² MPN or CFU per 100 mL.

■ 49. Revise § 432.113 to read as follows:

§ 432.113 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart that

slaughters more than 100 million pounds per year (in units of LWK) must achieve the following effluent limitations representing the application of BAT:

TABLE 1 TO § 432.113—EFFLUENT LIMITATIONS
[BAT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
Total Nitrogen	20	12
Total Phosphorus	1.5	0.8
E. Coli	² 14	³ 9

¹ (mg/L) (ppm).

² MPN or CFU per 100 mL.

■ 50. Revise § 432.114 to read as follows:

§ 432.114 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject

to this subpart that slaughters more than 100 million pounds per year (in units of LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

TABLE 1 TO § 432.114—PRETREATMENT STANDARDS FOR EXISTING SOURCES
[PSES]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

■ 51. Amend § 432.115 by revising the introductory text and paragraph (b) to read as follows:

§ 432.115 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards in

§ 432.115 continue to be subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in §§ 432.112 and 432.113 (for direct dischargers) or the revised pretreatment standards specified in § 432.114 (for indirect dischargers). Any source that is

a new source subject to this subpart must achieve the following performance standards:

* * * * *

(b) Facilities that slaughter more than 100 million pounds per year (in units of LWK) must achieve the following performance standards:

TABLE 2 TO PARAGRAPH (b)—PERFORMANCE STANDARDS
[NSPS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
BOD ₅	26	16
E. coli	² 14	² 9
Fecal Coliform	² 50	² 22
O&G (as HEM)	14	8.0
TSS	30	20
Total Phosphorus	1.5	0.8
Total Nitrogen	20	12

¹ mg/L (ppm).² MPN or CFU per 100 mL.

■ 52. Revise § 432.116 to read as follows:

§ 432.116 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that slaughters more than 100 million pounds per year (in units of

LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

TABLE 1 TO § 432.116—PRETREATMENT STANDARDS FOR NEW SOURCES
[PSNS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

Subpart L [Amended]

■ 53. Revise § 432.122 to read as follows:

§ 432.122 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point

source subject to this subpart that further processes more than 7 million pounds per year (in units of finished product) must achieve the following effluent limitations representing the application of BPT:

TABLE 1 TO § 432.122—EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
BOD ₅	26	16
Fecal Coliform	² 50	³ 22
O&G (as HEM)	14	8.0
TSS	30	20

¹ mg/L (ppm).² MPN or CFU per 100 mL.

■ 54. Revise § 432.123 to read as follows:

§ 432.123 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart that

further processes more than 7 million pounds per year (in units of finished product) must achieve the following effluent limitations representing the application of BAT:

TABLE 1 TO § 432.123—EFFLUENT LIMITATIONS
[BAT]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
Ammonia (as N)	8.0	4.0
Total Nitrogen	20	12
Total Phosphorus	1.5	0.8
E. Coli	² 14	² 9

¹ mg/L (ppm).² MPN or CFU per 100 mL.

■ 55. Revise § 432.124 to read as follows:

§ 432.124 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that processes more than 7 million pounds per year (in units of

LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

TABLE 1 TO § 432.124—PRETREATMENT STANDARDS FOR EXISTING SOURCES
[PSES]

Regulated parameter	Maximum daily ¹	Maximum monthly avg. ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

■ 56. Amend § 432.125 by revising the introductory text and paragraph (b) to read as follows:

§ 432.125 New source performance standards (NSPS).

Facilities subject to the 2004 new source performance standards in §§ 432.125 of this part continue to be

subject to those standards. These 2004 new sources are also subject to revised BPT and BAT effluent limitations specified in § 432.122 and 432.123 of this part (for direct dischargers) or the revised pretreatment standards specified in § 432.124 of this part (for indirect dischargers). Any source that is a new source subject to this subpart must

achieve the following performance standards:

* * * * *

(b) Facilities that further process more than 7 million pounds per year (in units of finished product) must achieve the following performance standards:

TABLE 2 TO PARAGRAPH (b)—EFFLUENT LIMITATIONS
[NSPS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg ¹
Ammonia (as N)	8.0	4.0
BOD ₅	26	16
E. coli	² 14	² 9
Fecal Coliform	² 50	² 22
O&G (as HEM)	14	8.0
TSS	30	20
Total Phosphorus	1.5	0.8
Total Nitrogen	20	12

¹ mg/L (ppm).² MPN or CFU per 100 mL.

■ 57. Revise § 432.126 to read as follows:

§ 432.126 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that processes more than 7 million pounds per year (in units of

LWK) that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

TABLE 1 TO § 432.126—PRETREATMENT STANDARDS FOR EXISTING SOURCES
[PSNS]

Regulated parameter	Maximum daily ¹	Maximum monthly avg ¹
BOD ₅	1,945	1,323
TSS	1,578	925
Oil and grease	1,635	1,393

¹ mg/L.

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