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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 10419 of June 22, 2022**

## 50th Anniversary of the Federal Pell Grant Program

**By the President of the United States of America**

**A Proclamation**

For 50 years, the Federal Pell Grant program has been the cornerstone of our Nation's efforts to create a financial pathway for tens of millions of low- and middle-income students to attend college. Established by the Congress in 1972 and named after former United States Senator from Rhode Island Claiborne Pell, a champion of higher education with whom I served in the United States Senate, Pell Grants are awarded to students based exclusively on their financial need. Since the program's creation, Pell Grants have helped more than 80 million students attend college and pursue their dreams.

Today, Pell Grants form the foundation of many students' financial assistance packages—especially for students of color. As the single largest source of grants for postsecondary education, Pell Grants were awarded to more than one-third of undergraduate students last academic year.

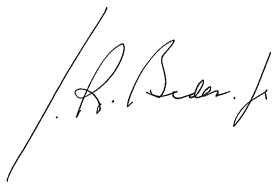
My Administration is committed to ensuring that higher education is equitable, accessible, and affordable for every student across the country. That is why, earlier this year, I signed a bill that includes the largest Pell Grant increase in over a decade. My Fiscal Year 2023 Budget calls for another historic increase in Pell Grants for academic year 2023–2024 and would double the maximum Pell Grants provided by 2029. Together, these investments will make it possible for more students from all backgrounds to pursue a postsecondary education that prepares them for quality employment and helps our Nation compete in the 21st century.

My Administration has also significantly expanded the Second Chance Pell Initiative, which enables students who are incarcerated to receive this critical grant aid so they can participate in postsecondary education programs, supporting their success and helping them make greater contributions to society upon their release. First established in 2015 by the Obama-Biden Administration, the Initiative has expanded under my Administration to 73 additional schools, providing access to education to thousands of additional students, reducing recidivism rates, and improving public safety. This will help the Department of Education prepare for the full expansion of Pell Grant eligibility to incarcerated students in July 2023.

On this 50th anniversary, our Nation pays tribute to the importance of Federal Pell Grants and the opportunities they afford millions of students across our Nation. Today, let us recommit to expanding access to quality education so that all of our citizens are empowered to achieve their professional goals and contribute to the success and prosperity of America.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 23, 2022, as the 50th Anniversary of the Federal Pell Grant Program. I call upon all Americans to observe this milestone and to recognize the significant contribution Pell Grants have made to strengthen our Nation's prosperity by making a college education more available to all of our children.

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



[FR Doc. 2022–13785
Filed 6–24–22; 8:45 am]
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# Rules and Regulations

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## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1240

**RIN 2590–AB18**

### Enterprise Regulatory Capital Framework—Public Disclosures for the Standardized Approach; Correction

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects typographical errors that appeared in the final rule published in the **Federal Register** on June 2, 2022, titled ''Enterprise Regulatory Capital Framework—Public Disclosures for the Standardized Approach''.

**DATES:** Effective August 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Andrew Varrieur, Senior Associate Director, Office of Capital Policy, (202) 649–3141, *Andrew.Varrieur@fhfa.gov;* Christopher Vincent, Senior Financial Analyst, Office of Capital Policy, (202) 649–3685, *Christopher.Vincent@fhfa.gov*; or James Jordan, Associate General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov* (these are not toll-free numbers); Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2022–11582 of June 2, 2022 (87 FR 33423), the following corrections are made:

#### § 1240.63 [Corrected]

■ 1. On page 33432, in § 1240.63, in the table titled ''Table 7 to Paragraph (c)—CRT and Securitization'', in paragraph (e), remove the word ''bank'' and add the word ''Enterprise'' in its place.

■ 2. On page 33433, in § 1240.63, in footnote 5 following table 7 to paragraph (c), remove the word ''bank'' and add the word ''Enterprise'' in its place.

**Sandra L. Thompson,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2022–13544 Filed 6–24–22; 8:45 am]

**BILLING CODE 8070–01–P**

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

**RIN 3245–AH74**

### Temporary 504 Express Loan Authority for Certified Development Companies Participating in the Accredited Lenders Program

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule implements the additional authority that the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act temporarily provides to Certified Development Companies participating in the Accredited Lenders Program with respect to 504 loans that are not more than $500,000 and that are not made to a borrower in an industry with a high rate of default, as defined by SBA.

**DATES:**

*Effective Date:* This rule is effective June 27, 2022.

*Applicability Date:* This rule applies to loan applications submitted to the Certified Development Company on or after June 27, 2022 and approved by the Certified Development Company and the U.S. Small Business Administration through September 30, 2023.

*Comment Date:* Comments must be received on or before August 26, 2022.

**ADDRESSES:** You may submit comments, identified by RIN 3245–AH74, through the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

SBA will post all comments on *http://www.regulations.gov*. If you wish to submit confidential business information (''CBI'') as defined in the User Notice at *http://www.regulations.gov,* please submit the information via email to *ALPExpress@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416; telephone: (202) 604–5032; email: *linda.reilly@sba.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background Information

The 504 Loan Program is an SBA financing program authorized under title V of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 695 *et seq*. The core mission of the 504 Loan Program is to provide long-term financing to small businesses for the purchase or improvement of land, buildings, and major equipment, in an effort to facilitate the creation or retention of jobs and local economic development. Under the 504 Loan Program, loans are made to small business applicants by Certified Development Companies (''CDCs''), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (a ''504 Project'') includes: a loan obtained from a private sector lender with a senior lien covering at least 50 percent of the project cost; a loan obtained from a CDC (a ''504 Loan'') with a junior lien covering up to 40 percent of the total cost (backed by a 100 percent SBA-guaranteed debenture); and a contribution from the Borrower of at least 10 percent equity.

There are three types of CDCs that participate in the 504 Loan Program. This rulemaking addresses the temporary authority that will be granted, in accordance with section 328(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116–260) (''Economic Aid Act''), to CDCs that are approved by SBA to participate in the Accredited Lenders Program (hereafter ''ALP CDCs'').[1] Currently, ALP CDCs

[1] The other 2 types of CDCs are the Premier Certified Lenders Program CDCs (PCLP CDCs), Continued

must obtain SBA's approval to make a 504 loan, including with respect to both the loan's eligibility and creditworthiness.[2] With respect to closing, ALP CDCs have delegated authority to make the ''No Adverse Change'' certification prior to loan closing without SBA's review and approval and are authorized to close 504 loans under the expedited loan closing procedures applicable to a Priority CDC. With respect to servicing, ALP CDCs are currently required to obtain SBA's approval for most servicing actions.

Section 328(b) of the Economic Aid Act temporarily provides increased authority to ALP CDCs with respect to ''covered loans.'' The Economic Aid Act defines a ''covered loan'' as a loan that is not more than $500,000 and that is not made to a borrower in an industry with a high rate of default as defined by SBA (hereafter referred to as ''ALP Express Loans''). Section 328(b) of the Economic Aid Act further requires that SBA annually identify the industries with a high rate of default. Accordingly, on an annual basis, SBA will list the industries that it has determined have a high rate of default in a notice published in the **Federal Register**. ALP CDCs may not use ALP Express Loan authority with respect to any loan made to a business in an industry listed in the **Federal Register** notice as having a high rate of default.

In accordance with section 328(b) of the Economic Aid Act, SBA is delegating to ALP CDCs the authority to make the final decision with respect to the applicant's creditworthiness on ALP Express Loans. The ALP CDC's determination regarding creditworthiness will not be subject to SBA review. SBA will continue to be responsible for reviewing each loan to ensure that it meets all Loan Program Requirements for program eligibility, including but not limited to those requirements involving franchise or similar agreements, historic properties, property with environmental issues, businesses involving religious activities, or businesses with activities of a prurient sexual nature. SBA also is delegating to ALP CDCs the authority to approve certain servicing actions after closing on ALP Express Loans. ALP CDCs must promptly notify the appropriate SBA servicing center of their approval of any servicing action on ALP Express Loans. SBA will consider prompt notification to be within 5 business days of approval.

With respect to the closing process, ALP CDCs, like PCLP CDCs, will be responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

In their own discretion, ALP CDCs may decide to not exercise their delegated authority with respect to an ALP Express Loan and may instead submit the loan to SBA under non-delegated procedures. ALP CDCs may not use their ALP Express Loan authority to service a loan that was approved under non-delegated authority that could have been made as an ALP Express Loan. In addition, PCLP CDCs may decide to process an ALP Express Loan under their status as an ALP CDC instead of as a PCLP CDC, thereby not requiring the CDC to comply with Loan Loss Reserve Fund requirements for that loan.

Finally, the authority provided by the Economic Aid Act is available for loan applications submitted to the ALP CDC on or after the effective date of this rulemaking and approved by the Certified Development Company and SBA through September 30, 2023.

Therefore, SBA is issuing this interim final rule to conform its rules with the requirements of the Economic Aid Act by adding a new section to part 120 of its regulations, § 120.842. The contents of this section are discussed in detail in Section III, below.

## II. Justification for Publication as Interim Final Rule With Immediate Effective Date

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. In addition to section 303 of the Economic Aid Act that authorizes SBA to issue regulations to implement the amendments described above without regard to notice requirements, the APA also provides an exception to this standard rulemaking process where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. SBA finds that good cause exists to publish this rule as an interim final rule, because there is an urgent need for SBA to implement this temporary program without further delay. Since the Economic Aid Act was enacted in December 2020 (and for many months before), SBA has been required to implement many initiatives related to the pandemic. These initiatives have competed for SBA's limited time and resources, and the implementation of some programs has been unavoidably delayed by those limitations. Any further delay in implementing the ALP Express Loan authority would be contrary to the public interest, as small businesses would have to wait even longer to benefit from the expedited processing provided by this temporary program. By providing an expedited process for certain loans made by ALP CDCs, this program will assist in meeting the ongoing financing needs of small businesses that continue to be impacted by the COVID–19 pandemic.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before August 26, 2022. SBA will consider any comments it receives and the need for making any amendments as a result of the comments.

In addition, the APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**. The purpose of this APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. Because of the nature of the changes made by this rule, ALP CDCs and potential loan applicants will not need 30 days after publication of the rule to adjust to the more relaxed procedures. The rule does not change the substantive requirements for obtaining certain 504 loans; delegating increased authority to ALP CDCs with respect to the approval and servicing of those loans only impacts the procedural steps that ALP CDCs are currently required to follow to process a loan. For this and other reasons discussed above, SBA finds there is good cause to make this interim final rule effective immediately instead of imposing a 30-day period between publication and effective date.

which have increased authority to process, service and liquidate 504 loans, and the CDCs that are neither PCLP nor ALP CDCs, which must obtain SBA approval for nearly all loan actions.

[2] ALP CDCs with a record of submitting high quality loan applications may be selected by the Sacramento Loan Processing Center (''SLPC'') to participate in the Abridged Submission Method, which is a streamlined application process.

**III. Discussion of New § 120.842**

SBA is adding a new section, 120.842, to implement the authority of ALP CDCs to make ALP Express Loans.

*Paragraph (a)*

Paragraph (a) sets forth the definition of ''ALP Express Loan.''

*Paragraph (b)*

Paragraph (b) sets forth the requirements related to the underwriting, approving, closing, and servicing of ALP Express Loans. In conducting such activities, ALP CDCs must comply with Loan Program Requirements, act in accordance with prudent and commercially reasonable lending standards, and document in its files the basis for each of its decisions.

With respect to underwriting, this provision provides that ALP CDCs are authorized to make the final decision with respect to the applicant's creditworthiness and establishing the terms and conditions of the ALP Express Loan. The ALP CDC's determination regarding creditworthiness will not be subject to SBA review. However, ALP CDCs are reminded that, in accordance with § 120.938, SBA will look to the CDC for the entire amount of the Debenture in the case of fraud, negligence, or misrepresentation by the CDC if the CDC defaults on the Debenture that funded an ALP Express Loan.

SBA will continue to be responsible for reviewing each loan to ensure that it meets all Loan Program Requirements for program eligibility, including but not limited to those requirements involving franchise and similar agreements, historic properties, property with environmental issues, businesses involving religious activities, or businesses with activities of a prurient sexual nature. After approving the creditworthiness of the loan, ALP CDCs will be required to submit to SBA with the loan application all required documentation, including documentation necessary for SBA to make the final eligibility decision. If SBA determines that the applicant and the ALP Express Loan are eligible and that SBA funds are available, SBA will notify the ALP CDC of the loan number assigned to the loan and provide the CDC with a signed copy of the Loan Authorization. ALP CDCs must submit to the Sacramento Loan Processing Center (SLPC) for review and approval any servicing action that the ALP CDC proposes prior to closing that may affect the eligibility of the borrower or the ALP Express Loan.

With respect to closing, the ALP CDC is responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

With respect to servicing, the ALP CDC is responsible for servicing its ALP Express Loans in accordance with § 120.970. SBA may in certain circumstances, in its discretion, elect to handle such duties with respect to a particular ALP Express Loan or Loans. Additional servicing requirements are set forth in subpart E of this part. SBA will identify through its Loan Program Requirements which servicing actions that SBA will delegate to the CDC with respect to ALP Express Loans. The CDC must promptly notify the appropriate SBA commercial loan servicing center of any servicing action that it has approved under its delegated authority. SBA will consider prompt notification to be within 5 business days of approval.

*Paragraph (c)*

Paragraph (c) provides that a CDC is prohibited from processing a loan as an ALP Express Loan if the loan was previously submitted to SBA and was withdrawn by the CDC or was declined or otherwise not approved by SBA.

*Paragraph (d)*

Paragraph (d) explains that the authority to make ALP Express Loans is available for applications submitted to the ALP CDC on or after the effective date of this rulemaking and approved by the Certified Development Company and SBA through September 30, 2023.

**Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act, (5 U.S.C. 801–808), Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)**

*Executive Orders 12866 and 13563*

The Office of Management and Budget (''OMB'') has determined that this rule constitutes a ''significant regulatory action'' for purposes of Executive Orders 12866, *Regulatory Planning and Review,* and 13563, *Improving Regulation and Regulatory Review.* SBA, however, is proceeding under the emergency provision at Executive Order 12866, section 6(a)(3)(D), based on the need to move expeditiously to mitigate the current conditions arising from the COVID–19 pandemic. This rule is necessary to implement the Economic Aid Act and provide economic relief to small businesses adversely impacted by COVID–19. SBA anticipates that implementing the ALP Express Loan authority and providing ALP CDCs with greater authority to approve and service loans will reduce processing time and therefore benefit small businesses, their employees, and the communities they serve.

*Congressional Review Act*

OMB has determined that this rule is not a major rule under 5 U.S.C. 804(2).

*Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform,* to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

*Executive Order 13132*

This rule does not have federalism implications as defined in Executive Order 13132, *Federalism.* It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

*Paperwork Reduction Act*

In order to implement the Act, SBA has determined that it is necessary to temporarily modify SBA Form 1244, which is currently approved under OMB Control Number 3245–0071, *Application for Section 504 Loans,* to conform the application with the revised requirements for ALP Express Loan authority. The changes will not add any new burdens for the respondents. SBA recently updated SBA Form 1244 to account for permanent changes to the Debt Refinancing 504 program, along with technical corrections for the last update to SBA Form 1244. SBA is making the following technical corrections and clarifying changes to SBA Form 1244: (1) revising the instructions on page 1 (*Purpose of the Form*) to clarify that CDCs with ALP Express Loan authority must use the form; (2) adding a new ALP Express checkbox to page 12 in the *Submission Method* field; and (3) updating the instructions on pages 15 and 16 (*Required Exhibits*) to identify which exhibits must be completed and uploaded in SBA's E-Tran system for ALP Express Loans and which exhibits non-ASM CDCs must complete and upload into E-Tran. SBA has obtained emergency approval from OMB for the revised information collection to

implement these revisions as expeditiously as possible.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires administrative agencies to consider the effect of their actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of these small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. As discussed above, SBA is publishing this rule as an interim final rule without advance notice and public comment because section 303 of the Economic Aid Act authorizes SBA to issue regulations to implement the amendments in the Act without regard to notice requirements. This rule is, therefore, exempt from the RFA requirements.

**List of Subjects in 13 CFR Part 120**

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

## PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 is revised to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, 697, 697a and e, and note; Pub. L. 116–260, 134 Stat. 1182.

■ 2. Add § 120.842 under the undesignated center heading ''Accredited Lenders Program (ALP)'' to read as follows:

**§ 120.842 ALP Express Loans.**

(a) *Definition.* For the purposes of this section, an *ALP Express Loan:*

(1) Means a 504 loan in an amount that is not more than $500,000; and

(2) Does not include a loan made to a borrower that is in an industry that has a high rate of default, as annually determined by SBA. SBA will publish an annual list of the industries with a high rate of default in a notice in the **Federal Register**.

(b) *Requirements for the underwriting, approving, closing, and servicing of ALP Express Loans*—(1) *General.* When underwriting, approving, closing, and servicing 504 loans under this section, the ALP CDC must comply with Loan Program Requirements and conduct such activities in accordance with prudent and commercially reasonable lending standards.

(2) *Documentation of decision making.* For each ALP Express Loan, the ALP CDC must document in its files the basis for its decisions with respect to underwriting, approving, closing, and servicing the loan.

(3) *Processing requirements*—(i) *Eligibility.* An ALP Express Loan is subject to SBA's final approval as to eligibility and, for each loan, an ALP CDC must submit the documents required by SBA to complete the eligibility review. ALP CDCs must submit to SBA for review and approval any servicing action that the ALP CDC proposes prior to closing that may affect the eligibility of the borrower or the ALP Express Loan.

(ii) *Credit decisions.* The ALP CDC is responsible for properly determining the applicant's creditworthiness and establishing the terms and conditions under which the ALP Express Loan will be made in accordance with SBA's Loan Program Requirements and prudent lending standards. The ALP CDC's determination regarding creditworthiness will not be subject to SBA review.

(4) *Submission of loan documents.* An ALP CDC must notify SBA of its credit decision on an ALP Express Loan by submitting to SBA all required documentation. SBA will review these documents to determine whether the applicant and the ALP Express Loan are eligible and whether SBA funds are available for the ALP Express Loan. If approved, SBA will notify the ALP CDC of the loan number assigned to the loan and provide the CDC with a signed copy of the Loan Authorization.

(5) *Loan and Debenture closing.* After receiving notification of the loan number and a signed copy of the Loan Authorization from SBA, the ALP CDC is responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

(6) *Servicing.* The ALP CDC is responsible for servicing its ALP Express Loans in accordance with § 120.970. SBA may in certain circumstances, in its discretion, elect to handle such duties with respect to a particular ALP Express Loan or Loans. Additional servicing requirements are set forth in subpart E of this part. The CDC must promptly notify SBA when it approves any servicing action delegated to the CDC under Loan Program Requirements.

(c) *Prohibition against making a 504 loan previously submitted to the SBA.* An ALP CDC may not process a 504 loan application under paragraph (b)(3) of this section from an applicant whose application was previously submitted to SBA and was withdrawn by the CDC or was declined or otherwise not approved by SBA.

(d) *Applicability.* The authority to make ALP Express Loans is available for applications submitted to the ALP CDC on or after June 27, 2022 and approved through September 30, 2023.

**Isabella Casillas Guzman,**

*Administrator.*

[FR Doc. 2022–13359 Filed 6–24–22; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2022–0800; Project Identifier MCAI–2022–00705–T; Amendment 39–22105; AD 2022–13–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2022–11–03, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–11–03 required revising the existing airplane flight manual (AFM), and revising the operator's existing FAA-approved minimum equipment list (MEL) by incorporating certain master minimum equipment list (MMEL) provisions, to include limitations and procedures to mitigate the risk of elevator failure during flare. Since the FAA issued AD 2022–11–03, an updated software standard for the PRIMary flight control computers (PRIMs) has been developed to address the unsafe condition. This AD continues to require the actions in AD 2022–11–03, and also requires installing an updated PRIM software standard, 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 July 12, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2022.

The FAA must receive comments on this AD by August 11, 2022.

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

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

For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* 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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0800.

**Examining the AD Docket**

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0800; 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 AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3225; email *Dan.Rodina@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0800; Project Identifier MCAI–2022–00705–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3225; email *Dan.Rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Background**

The FAA issued AD 2022–11–03, Amendment 39–22053 (87 FR 30402, May 19, 2022) (AD 2022–11–03), which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–11–03 required revising the existing AFM, and revising the operator's existing FAA-approved MEL by incorporating certain MMEL provisions, to include limitations and procedures to mitigate the risk of elevator failure during flare. The FAA issued AD 2022–11–03 to address the faulty FCGS X13 standard, which could lead to loss of control of the elevator surfaces, possibly resulting in loss of control of the airplane.

**Actions Since AD 2022–11–03 Was Issued**

Since the FAA issued AD 2022–11–03, which the FAA considered an interim action, an updated software standard for the PRIMs has been developed to address the unsafe condition.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0098, dated June 1, 2022 (EASA AD 2022–0098) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes and require installing the updated software standard.

This AD was prompted by the FAA's determination that the updated software standard must be installed in order to address the unsafe condition. The FAA is issuing this AD to address the faulty FCGS X13 standard, which could lead to loss of control of the elevator surfaces, possibly resulting in loss of control of the airplane. See the MCAI for additional background information.

**Explanation of Retained Requirements**

Although this AD does not explicitly restate the requirements of AD 2022–11–03, this AD retains all of the requirements of AD 2022–11–03. Those requirements are referenced in EASA AD 2022–0098, which, in turn, is referenced in paragraph (g) of this AD.

**Related Service Information Under 1 CFR Part 51**

EASA AD 2022–0098 specifies procedures for revising the Limitations and Normal Procedures sections of the existing AFM, revising the operator's existing FAA-approved MEL by incorporating MMEL provisions, to include limitations and procedures to mitigate the risk of elevator failure during flare, and installing an updated PRIM software standard.

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

**FAA's Determination**

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 described above.

The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

**Requirements of This AD**

This AD requires accomplishing the actions specified in EASA AD 2022–0098 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

EASA AD 2022–0098 requires operators to revise the AFM and ''inform all flight crews, and, thereafter, operate the aeroplane accordingly.'' However, this AD does not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Similarly, EASA AD 2022–0098 specifies amending the operator's MEL and, thereafter, ''operating the aeroplane accordingly.'' However, this AD does not include specific operating requirements as they are already required by FAA regulations. FAA regulations (14 CFR 121.628 (a)(2)) require operators to provide pilots with access to all of the information contained in the operator's MEL. Furthermore, 14 CFR 121.628 (a)(5) requires airplanes to be operated under all applicable conditions and limitations contained in the operator's MEL. Therefore, including a requirement in this AD to operate the airplane according to the revised MEL would be redundant and unnecessary.

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0098 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0098 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0098 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0098. Service information required by EASA AD 2022–0098 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0800 after this AD is published.

**FAA's Justification and Determination of the Effective Date**

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule. Since the FAA issued AD 2022–11–03, an updated software standard for the PRIMs has been developed to address the unsafe condition. The actions required by AD 2022–11–03 are an interim action that mitigate the unsafe condition but do not address the root cause of the unsafe condition. The installation of the updated software standard addresses the root cause of the unsafe condition and allows the removal of the AFM and MEL revisions required by AD 2022–11–03.

Incorrect logic in the PRIMs may cause the PRIM computers to inadvertently lose control over their respective elevator actuators during flare phase, depending on flight conditions, potentially affecting every flight and possibly resulting in loss of control of the airplane in a critical phase of flight. Given the significance of the risk presented by this unsafe condition, it must be immediately addressed. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

**Regulatory Flexibility Act (RFA)**

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

**Costs of Compliance**

The FAA estimates that this AD affects 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Retained actions from AD 2022-11-03 | 1 work-hour × $85 per hour = $85 | $0 | $85 | $2,550 |
| New actions | 2 work-hours × $85 per hour = $170 | 300 | 470 | 14,100 |

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–11–03, Amendment 39–22053 (87 FR 30402, May 19, 2022); and

■ b. Adding the following new AD:

**2022–13–19 Airbus SAS:** Amendment 39–22105; Docket No. FAA–2022–0800; Project Identifier MCAI–2022–00705–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective July 12, 2022.

**(b) Affected ADs**

This AD replaces AD 2022–11–03, Amendment 39–22053 (87 FR 30402, May 19, 2022) (AD 2022–11–03).

**(c) Applicability**

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0098, dated June 1, 2022 (EASA AD 2022–0098).

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight controls.

**(e) Unsafe Condition**

This AD was prompted by an indication that both elevator actuators of the PRIMary flight control computers (PRIMs) were considered faulty due to incorrect instructions with a new PRIM standard and a determination that an updated software standard for the PRIMs must be installed. The FAA is issuing this AD to address the faulty standard, which could lead to loss of control of the elevator surfaces, possibly resulting in loss of control of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0098.

**(h) Exceptions to EASA AD 2022–0098**

(1) Where EASA AD 2022–0098 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0098 refers to May 9, 2022 (the effective date of EASA AD 2022–0079–E), this AD requires using June 3, 2022 (the effective date of AD 2022–11–03).

(3) Where paragraph (1) of EASA AD 2022–0098 specifies to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(4) Where paragraph (3) of EASA AD 2022–0098 specifies to ''implement the instructions of the MER, as defined in [the EASA] AD,'' for this AD replace that phrase with ''revise the operator's existing FAA-approved minimum equipment list (MEL) to incorporate the instructions of the MER.''

(5) Where paragraph (4) of EASA AD 2022–0098 specifies ''operating the aeroplane accordingly,'' this AD does not require that action as that action is already required by existing FAA operating regulations.

(6) The ''Remarks'' section of EASA AD 2022–0098 does not apply to this AD.

**(i) Additional AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) 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, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(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.

**(j) Related Information**

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3225; email *Dan.Rodina@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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0098, dated June 1, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0098, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0800.

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

Issued on June 17, 2022.

**Christina Underwood,**

*Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2022–13720 Filed 6–23–22; 11:15 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2022–0459; Project Identifier MCAI–2021–00266–E; Amendment 39–22102; AD 2022–13–16]**

**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.) Turboprop Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all GE Aviation Czech s.r.o. (GEAC) M601D–11 model turboprop engines. This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to include a visual inspection of the centrifugal compressor case for cracks. This AD requires revising the ALS of the existing EMM to incorporate a visual inspection of the centrifugal compressor case. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 1, 2022.

**ADDRESSES:** For service information identified in this final rule, contact GE Aviation Czech, Beranových 65, 199 02 Praha 9—Letňany, Czech Republic; phone: +420 222 538 999; email: *tp.ops@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.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0459; 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.

**FOR FURTHER INFORMATION CONTACT:** Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; 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 by adding an AD that would apply to all GEAC M601D–11 model turboprop engines. The NPRM published in the **Federal Register** on April 14, 2022 (87 FR 22149). The NPRM was prompted by the manufacturer revising the ALS of the existing EMM to include a visual inspection of the centrifugal compressor case for cracks. In the NPRM, the FAA proposed to require revising the ALS of the existing EMM to incorporate a visual inspection of the centrifugal compressor case for cracks. In the NPRM, the FAA proposed that an owner/operator (pilot) holding at least at least a private pilot certificate may revise the ALS of the existing EMM, and the owner/operator must enter compliance with the applicable paragraphs of the AD into the aircraft records in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). This is an exception to the FAA's standard maintenance regulations. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0060, dated March 3, 2021 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> The airworthiness limitations for certain M601 engine models, which are approved by EASA, are currently defined and published in the ALS.
>
> These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Recently, GEAC published the ALS, as defined in this [EASA] AD, introducing a visual inspection of the Centrifugal Compressor Case.
>
> For the reason described above, this [EASA] AD requires accomplishment of the actions specified in the ALS.

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0459.

### Discussion of Final Airworthiness Directive

*Comments*

The FAA received no comments on the NPRM or on the determination of the cost to the public.

*Conclusion*

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. This AD is adopted as proposed in the NPRM.

*Related Service Information*

The FAA reviewed GE Aviation Czech Airworthiness Limitations R18, Section 5. Mandatory Inspections, of the GE Aviation Czech EMM, Part No. 0982309, Revision No. 18, dated December 18, 2020 (Airworthiness Limitations R18, Section 5. Mandatory Inspections). Airworthiness Limitations R18, Section 5. Mandatory Inspections, of the EMM describe procedures for performing a visual inspection of the centrifugal compressor case for cracks.

### Costs of Compliance

The FAA estimates that this AD affects 7 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 of the EMM | 1 work-hour × $85 per hour = $85 | $0 | $85 | $595 |

**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 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:

**2022–13–16 GE Aviation Czech s.r.o (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.):** Amendment 39–22102; Docket No. FAA–2022–0459; Project Identifier MCAI–2021–00266–E.

**(a) Effective Date**

This airworthiness directive (AD) is effective August 1, 2022.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to GE Aviation Czech s.r.o. M601D–11 model turboprop engines.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to include a visual inspection of the centrifugal compressor case for cracks. The FAA is issuing this AD to prevent failure of the centrifugal compressor case. The unsafe condition, if not addressed, could result in failure of the centrifugal compressor case, engine separation, and loss of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) Within 90 days after the effective date of this AD, revise the ALS of the existing EMM by incorporating Figure 1 to paragraph (g)(1) of this AD.

## Figure 1 to Paragraph (g)(1) – Visual Inspection of the Centrifugal Compressor Case

**5. Mandatory Inspections**

5.1 Visual inspection of Centrifugal Compressor Case

Accomplishment Instruction

Do a visual inspection of the compressor case in the specified areas, shown in Figure 1, for every 100±10 Flight Hours. Use magnifying lens 10x for inspection. No visible cracks are allowed.

Equipment:

The following equipment is required and may be obtained as shown:

- A 150-watt standard spotlight or 40-watt high intensity spotlight or alternative (Commercial) to acquire necessary illumination at minimum 1000lux.
- Magnification equipment 10x (Commercial).

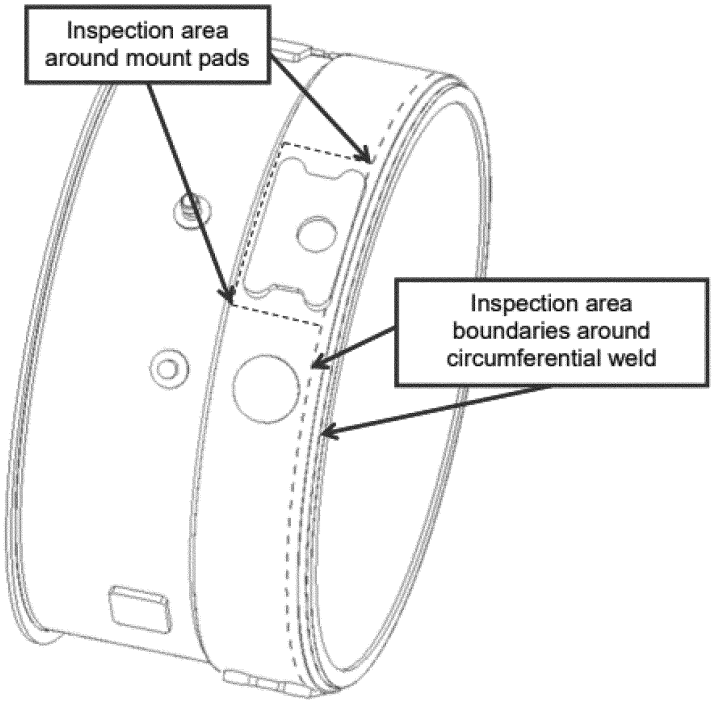


Figure 1. Centrifugal Compressor Case

(2) After revising the ALS of the existing EMM required by paragraph (g)(1) of this AD, no alternative inspection intervals may be used unless they are approved as provided in paragraph (h) of this AD.

(3) 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 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

**(h) Alternative Methods of Compliance (AMOCs)**

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

**(i) Related Information**

(1) For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0060, dated March 3, 2021, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0459.

**(j) Material Incorporated by Reference**

None.

Issued on June 17, 2022.

**Christina Underwood,**

*Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2022–13503 Filed 6–24–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2022–0307; Airspace Docket No. 22–AGL–17]**

**RIN 2120–AA66**

## Amendment of Class E Airspace; Milbank and South Dakota, SD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Class E airspace at Milbank, SD, and the State of South Dakota. The FAA is taking this action due to an airspace review conducted as part of the decommissioning of the Watertown very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

**DATES:** Effective 0901 UTC, September 8, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Milbank Municipal Airport, Milbank, SD, to support instrument flight rule operations at this airport, and amends the Class E airspace extending upward from 1,200 feet above the surface over the State of South Dakota to clarify, simplify, standardize the airspace over the state, and close any gaps in the Class E airspace to support instrument flight rule operation over the state.

### History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 21058; April 11, 2022) for Docket No. FAA–2022–0307 to amend the Class E airspace at Milbank, SD, and the State of South Dakota. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Rule

This amendment to 14 CFR part 71:

Amends the Class E airspace extending upward from 700 feet above the surface at Milbank Municipal Airport, Milbank, SD, by removing the Watertown VOR from the airspace legal description; updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the airspace extending upward from 1,200 feet above the surface as it will become redundant with the amendment of the Class E airspace over the State of South Dakota;

And amends the Class E airspace extending upward from 1,200 feet above the surface at South Dakota, SD, from ''. . . an area bounded on the north by lat. 43°40′00″ N, on the east by long. 100°05′00″ W, on the south by the South Dakota, Nebraska border, and on the west by long. 102°00′02″ W'' to ''. . . the boundary of the State of South Dakota'' to clarify, simply, standardize the airspace over the state, and close any gaps in the Class E airspace.

This action is due to an airspace review conducted as part of the decommissioning of the Watertown VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

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

### Regulatory Notices and Analyses

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

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and

no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

**AGL SD E5 Milbank, SD [Amended]**

Milbank Municipal Airport, SD,
(Lat. 45°13′50″ N, long. 96°33′58″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.4-mile radius of the Milbank Municipal Airport.

* * * * *

**AGL SD E5 South Dakota, SD [Amended]**

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of South Dakota.

Issued in Fort Worth, Texas, on June 21, 2022.

**Wayne L. Eckenrode,**

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

[FR Doc. 2022–13507 Filed 6–24–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 880, 881, 883, 884, 886, and 891

**[Docket No. FR–5654–F–03]**

**RIN 2502–AJ22**

## Streamlining Management and Occupancy Reviews for Section 8 Housing Assistance Programs

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends existing project-based Section 8 regulations related to Management and Occupancy Reviews (MORs) for the following seven project-based Section 8 programs administered by the Office of Multifamily Housing Programs: the Section 8 Housing Assistance Payments (HAP) Programs for New Construction, Substantial Rehabilitation, State Housing Agencies, New Construction financed under Section 515 of the Housing Act of 1949, the Loan Management Set-Aside Program, the HAP Program for the Disposition of HUD-Owned Projects, and the Section 202/8 Program. Under this final rule, MORs will be conducted in accordance with a performance-based schedule published in the **Federal Register**, following a notice and comment period. The first such schedule is being published concurrently with this final rule and can be found elsewhere in this issue of the **Federal Register**. HUD is making this move to a performance-based MOR schedule to establish a risk-based scheduling protocol, reduce the frequency of MORs for projects that consistently perform well, and provide consistency across programs with respect to MOR frequency. Additionally, HUD is correcting a regulatory citation in its regulations concerning the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects.

**DATES:** The effective date of this final rule is September 26, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Lavorel, Director, Program Administration Office, Office of Multifamily Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–7000; telephone number 202–402–2515 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 14, 2015, HUD published for public comment a proposed rule (80 FR 1860) to amend the regulations that govern seven project-based Section 8 HAP programs administered by the Office of Multifamily Housing Programs: the HAP program for New Construction (24 CFR part 880) and the HAP program for Substantial Rehabilitation (24 CFR part 881), which provide rental assistance in connection with the development of newly constructed or substantially rehabilitated privately owned rental housing; the HAP Program for State Housing Agencies (24 CFR part 883), which applies to newly constructed or substantially rehabilitated housing financed by State agencies; the HAP program for New Construction financed under Section 515 of the Housing Act of 1949 (24 CFR part 884), which applies to U.S. Department of Agriculture rural rental housing projects; the Loan Management Set Aside Program (24 CFR part 886, subpart A), which provides rental subsidies to HUD-insured or HUD-held multifamily properties experiencing immediate or potential financial difficulties; the HAP for the Disposition of HUD-Owned Projects (24 CFR part 886, subpart C), which provides Section 8 assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-held mortgages on rental housing projects; and the Section 202/8 Program (24 CFR part 891, subpart E), which provides assistance for housing projects serving the elderly or households headed by persons with disabilities.

For the above-described programs, contract administrators (CAs) conduct Management and Occupancy Reviews (MORs) to assess project performance. MORs evaluate management, provide oversight of HUD-assisted projects, and assure owner compliance with HAP contract requirements. Under existing regulations, the frequency of MORs across programs is inconsistent. For example, some programs require CAs to perform MORs at least annually, while others require an MOR only as necessary. The proposed rule sought to provide for consistency across programs.

Existing regulations also fail to take into consideration project performance. In fact, many projects assisted under the above-described programs consistently receive high MOR scores. For example, in FY 2018, 90.4 percent of projects received a score of ''Satisfactory,'' ''Above Average,'' or ''Superior''; the number of projects receiving such scores

increased to 92.1 percent in FY 2019, 93.1 percent in FY 2020, and 94.1 percent in FY 2021.

CAs are required to visit each project as part of the MOR, expending staff time and resources to prepare for and conduct each review. In order to devote relatively fewer resources to higher-performing projects, the proposed rule called for the adoption by **Federal Register** Notice, subject to public comment, of an MOR schedule that takes project performance into account. The first such performance-based MOR proposed schedule [1] was published concurrently with the proposed rule.

As proposed, the performance-based MOR schedule also takes HUD's risk-rating of each project into account. Under HUD's risk-rating system, each project is rated as ''Not Troubled,'' ''Potentially Troubled,'' or ''Troubled.'' This risk-rating system is discussed in more detail in paragraph III.D, below. The proposed performance-based MOR schedule considers both a project's risk-rating and its MOR score to establish whether the project's next MOR will be scheduled within 12, 24, or 36 months of the previous MOR.

The proposed rule also sought to amend the permitted duration of vacancy payments to owners of the above-described projects and of projects assisted under the Section 162 Project Assistance Contract program. Lastly, the proposed rule included a technical correction to § 886.309, replacing a citation to § 886.327 with a citation to § 886.328.

Members of the public interested in more detail about the proposed rule or the proposed MOR schedule may refer to the January 14, 2015, edition of the **Federal Register**.

## II. This Final Rule

This final rule follows publication of the January 14, 2015, proposed rule as well as the proposed performance-based MOR schedule and takes into consideration public comments received on both documents. HUD has decided to adopt without substantive change the portion of the proposed rule that provides for an MOR schedule to be established via **Federal Register** Notice, subject to public comment. Likewise, HUD is adopting without change its proposed methodology for MOR scheduling, basing project schedules on both the project's risk rating and its MOR score. HUD has adopted the following changes based on public comments:

(1) HUD has decided against proceeding with the proposed changes regarding the permitted duration of vacancy payments;

(2) HUD's proposed rule provided that HUD could inspect a project at any time. HUD at the final rule stage requires that an MOR be performed within 6 months following a change in ownership or management irrespective of a project's performance-based MOR schedule. HUD believes adding an inspection at a change in ownership or management is appropriate to ensure that the MOR is based on the current management at the time;

(3) HUD is requiring that the CA review all tenant files for each sampled file going back to the previous MOR. In other words, if an MOR is taking place 36 months from the previous MOR, the CA must assess the current year's tenant files and tenant files going back to the previous MOR, for each sampled file; and

(4) HUD is making changes to the final MOR schedule, which is published elsewhere in this issue of the **Federal Register**.

The effective date of this rule is 90 days after the date of publication, which means that CAs will not begin conducting reviews pursuant to the performance-based MOR schedule until 90 days from the date of publication in the **Federal Register**.

## III. Discussion of Public Comments

HUD received 23 public comments on the proposed rule and 16 public comments on the proposed MOR schedule from management associations, public housing authorities, homebuilders' associations, residents of public housing, and other interested parties. A number of comments on the proposed rule were identical to comments received on the proposed performance-based MOR schedule; other comments on the proposed rule addressed both documents. HUD is therefore responding to the comments received on both documents in this preamble to the final rule.

In general, many commenters expressed support for both the proposed rule and the proposed performance-based MOR schedule. These commenters supported basing MOR frequency on project performance, noting the associated reduction in burden, improvements in efficiency, and targeting of resources. Some commenters expressed opposition to both the proposed rule and the proposed performance-based MOR schedule, citing concerns about potential decreases in rates of compliance and other issues that are discussed in more detail below.

### *A. Compliance Concerns*

*Comment: Reducing the frequency of MORs could affect compliance.* Commenters stated that a reduction in the frequency of MORs could result in increased improper payments. These comments took two general views.

One view focused on the potential for payments where a project had fallen out of compliance. For example, commenters wrote that a property can deteriorate quickly as a result of on-site staff issues or changes in ownership or management, or due to an owner relaxing upkeep and housing maintenance standards. One commenter stated that the reduced frequency of MORs may ultimately result in additional HUD time and resources being expended later to revise the MOR schedule once again to reverse the effects of the change to a performance-based MOR schedule.

Another view focused on the role of the MOR in discovering erroneous assistance payments that result from either a tenant, property owner, or management agent making an error. One commenter stated that errors in day-to-day certifications and recertifications have an immediate impact, resulting in the over- or underpayment of HAP. With respect to such errors, one commenter stated that, each year, new interpretations of the HUD Occupancy Handbook are emphasized, and the process of qualifying applicants gets increasingly complicated. The commenter stated that, as a result, the MOR becomes a training opportunity for staff, who often review requirements with and ask questions of CAs. The commenter stated that even the best management companies make mistakes and need checks and balances to ensure they are on track. Another commenter noted that some owners and management agents struggle to understand Enterprise Income Verification (EIV) reports or how to reconcile income discrepancies. Another commenter stated that annual reviews are much more important with the advent of EIV, because many owners and agents do not understand EIV reports or how to reconcile income discrepancies and are not therefore properly identifying underpayments. Because EIV income discrepancy and error information stays in the system for only 1 year after the most recent recertification, and because tenants move frequently, it will be difficult to catch errors and collect underpaid HAP amounts if the property files are being reviewed less frequently than annually.

[1] ''Section 8 Housing Assistance Programs Proposed Management and Occupancy Review Schedule'' (80 FR 1930, Jan. 14, 2015).

Finally, one commenter stated that moving away from annual MORs poses a risk to HUD with respect to HUD's goals under the Improper Payments Elimination and Recovery Act (IPERA).[2] Among other things, IPERA requires HUD to identify and reduce improper payments.

*HUD response:* HUD believes that the likelihood of payments being made to an owner who has failed to maintain their project in a satisfactory condition is unlikely to increase as a result of moving to a performance-based MOR schedule. Under this new schedule, only properties with a satisfactory or higher performance score and a risk rating of ''Not Troubled'' will move to a bi- or triennial MOR schedule. Nonetheless, this final rule provides HUD with a means of increasing the frequency of MORs if merited, after notice and comment. In addition, this final rule affirms that, irrespective of a project's performance-based MOR schedule, HUD or a CA may inspect a project or assess its operations at any time, as merited based on documented concerns.

With respect to the issue of owner or management agent errors resulting in over- or underpayment of HAP, HUD does not view the MOR as a tool for training owners or their agents on HUD's Occupancy Handbook, EIV, or other guidance or systems that owners and their agents must understand and employ to administer their projects in compliance with HUD requirements. The MOR is a tool employed by HUD to assess management performance vis-à-vis HUD requirements. Owners and agents bear the responsibility for administering projects in compliance with such requirements and, as such, must assure that staff receive the training they need. On the question of system updates of EIV reports, HUD Handbook 4350.3 requires both the Income Report (subparagraph 9–11.B) and the Income Discrepancy Report (subparagraph 9–11.C.3) to be maintained in the tenant file. In this final rule, HUD requires that the CA review all tenant files for each sampled file going back to the previous MOR, relying as needed on reports maintained in tenant files. HUD will not be precluded, therefore, from recovering improper payments under the performance-based MOR schedule. This requirement addresses the comment specific to HUD's goals under IPERA.

*Comment: Reducing MORs could result in the loss of Federal funds.* A commenter stated that MORs often result in the recovery of assistance payments as a result of either the tenant or property owner and management agent making an error. Another commenter stated that errors in day-to-day certifications and re-certifications have an immediate effect, resulting in HAP over- or underpayment. One commenter noted that property owners and management agents would lose additional funds, because they would err on the side of reducing the overpayment of subsidy so as not to outweigh the cost of continued compliance.

*HUD response:* HUD believes that the final schedule strikes an appropriate cost-benefit balance and that the concerns raised by commenters will be resolved once property owners and management agents adapt to the new schedule. HUD notes as well that this rule provides HUD with the ability to amend the MOR schedule, if needed, via **Federal Register** Notice, following public comment. Having the ability to amend the MOR schedule in this way enables HUD to address relatively quickly any issues related to the frequency with which MORs are conducted.

*B. Scheduling Concerns*

*Comment: Adequate staffing, scheduling, and compensation.* One commenter expressed concerns about the effect of the proposed performance-based MOR schedule on the ability of Performance-Based Contract Administrators (PBCAs) to assure adequate staffing, as the number of MORs scheduled could vary widely from one year to the next. The commenter asked whether PBCAs will be compensated for MORs outside the scope of the Annual Contributions Contract (ACC) if HUD requires additional MORs outside of this schedule.

*HUD response:* PBCA staffing is based on schedules adopted by PBCAs, as approved by HUD. This final rule has an effective date of September 26, 2022 in order to provide PBCAs with adequate time to assess all Section 8 projects in their portfolios and develop a schedule for the completion of MORs consistent with this final rule and the performance-based MOR schedule. This ''MOR Plan'' will be submitted to HUD for review. In evaluating each PBCA's MOR Plan, HUD will consider historical data on projects' MOR dates and scores. Among the factors HUD will take into consideration is the amount of time since each project's previous MOR, recognizing that, due to a lack of funding to support MORs on 100 percent of the portfolio annually, MORs since April of 2016 have been conducted on only approximately ⅔ of projects annually. PBCAs are aware that HUD may require an MOR sooner than reflected in the performance-based MOR schedule if merited based on a change in conditions at the project, a congressional inquiry, a report from a unit of State or local government, or complaints from project residents.

*C. Initial and Ongoing Implementation*

*Comment: Clarify how HUD will approach the initial implementation of the new MOR schedule.* One commenter supported the change to a 3-, 2-, 1-year schedule and suggested that HUD require a baseline inspection to establish each project's risk rating. Another commenter recommended that upon implementation of the new performance-based schedule, any property that has gone 3 or more years without an MOR should receive an MOR within the first year, suggesting that a large number of properties have not received an MOR in more than 3 years. Another commenter recommended that HUD adopt additional parameters, such as requiring a review within 12 months for a change of ownership, management agent, or on-site personnel. Generally, commenters sought clarification regarding how HUD will implement the new MOR schedule.

*HUD response:* In implementing the performance-based MOR schedule, HUD will establish a time frame for each project's next MOR at the first MOR following the effective date of this final rule. Based upon a project's MOR score following that first MOR and the project's risk rating at the time, HUD will determine the date of each project's next MOR according to the performance-based MOR schedule.

If a project's condition or risk rating worsens following an MOR, either HUD or the CA may move up the date of the project's next scheduled MOR, irrespective of the performance-based MOR schedule for the project. If a project's condition or risk rating improves between MORs, the project will remain subject to its schedule as determined pursuant to the performance-based MOR schedule. In other words, HUD will not entertain requests to reduce the frequency of MORs based upon an improvement in a project's condition or risk rating between scheduled MORs but instead encourages owners to maintain their projects at a level that will merit a decrease in MOR frequency based on the project's risk rating and MOR score at the next scheduled MOR.

HUD agrees with the comment to require an MOR following a change in ownership or management and will

[2] Public Law 111–204, enacted July 22, 2010.

require that an MOR be conducted within 6 months of such a change.

*D. HUD's Risk Rating System*

*Comment: Clarify the process of determining a project's initial and ongoing risk rating.* Commenters asked how project owners and property managers can ascertain a project's risk rating. A few commenters asked what parameters are used in determining risk ratings.

*HUD response:* Under HUD's risk-rating system, each project is rated as ''Not Troubled,'' ''Potentially Troubled,'' or ''Troubled.'' At a high level, HUD's risk-rating system helps HUD to focus resources on projects that are most in need of attention. At the individual project level, the risk-rating criteria are intended to assist HUD staff in assessing the likelihood that a project will decline, considering both quantitative and qualitative factors. Individual project risk ratings are not made available publicly, as the property rating is part of HUD's deliberative process and because a released rating such as ''Troubled'' or ''Potentially Troubled'' could impair a project's ability to obtain the resources needed to improve. HUD will however make available to an owner or an authorized agent of the owner an individual project's risk rating upon request.

With respect to the parameters used to determine each project's risk rating, HUD considers both quantitative and qualitative measures and has adopted some measures unique to insured projects and others unique to non-insured projects. As of the effective date of this final rule, the following examples of criteria are considered:

- *For insured projects:* the likelihood of a claim within 12 months or sooner; whether a partial payment of claim or debt restructuring is in process; the project's Qualitative Assessment Score, which takes into account qualitative factors such as tenant complaints and local code violations; the project's vacancy rate, debt service coverage ratio, Real Estate Assessment Center (REAC) score; whether, for a new construction project, underwriting assumptions have been met.
- *For non-insured projects:* whether a HAP termination or foreclosure is pending; whether a transfer of budget authority or of HAP, debt, and use restrictions is in process; whether a change in ownership is required; whether the project has problems that make it eligible for a conversion to Housing Choice Voucher assistance that has not yet begun; the project's vacancy rate, REAC score; whether the project is in compliance with any applicable use agreement.

Note that the criteria that factor into a project's risk rating and the weighting of such criteria are subject to change.

*Comment: Risk-rating changes.* A commenter stated that there appear to be two items for CAs to monitor to determine the frequency of future MORs—risk rating and previous MOR score. The commenter asked if the risk rating is based on when the current MOR is complete, and, if not, how CAs will be notified of changes to the risk rating between MORs. Another commenter asked how the CA will be advised about changes in MOR schedules and recommended that HUD implement a standard protocol for informing the CA when a property's risk rating changes to ensure that the CA adheres to the correct schedule.

*HUD response:* As stated previously, at the time an MOR is completed, HUD will establish a timeframe for the next MOR based on the project's MOR score and its risk rating at that point in time. Changes in a project's risk rating will not always trigger a change in a project's performance-based MOR schedule. For example, as described earlier, HUD will not extend the timeframe between scheduled MORs based on improvements in a project's condition or risk rating between MORs. On the other hand, HUD or the CA may determine that an MOR is needed sooner than scheduled if a project's condition or risk-rating worsens (CAs have access to each property's risk-rating through HUD's Integrated Real Estate Management System (iREMS)). If HUD determines that an MOR is needed sooner than scheduled, HUD will make this known to the CA as part of HUD's review of the CA's next successive quarterly MOR Plan.

*Comment: Scope and availability of risk classifications.* Commenters requested how project owners and property managers can ascertain the risk classification given to properties. A few commenters asked what parameters are used in determining the risk classification. Another commenter asked if the risk classification is financially based, and, if so, suggested that a property considered ''Troubled'' should be reviewed more often than annually regardless of the last MOR rating. One commenter suggested that HUD should provide information about how input from residents is obtained and used in determining a property's risk score. Another commenter suggested that HUD provide additional clarification and guidance on assessing overall ratings as it relates to risk-based monitoring cycles for MORs. The commenter also asked if this schedule would apply to a traditional CA.

*HUD response:* HUD's asset risk-rating process uses an objective scale that considers financial characteristics (*e.g.,* low debt service coverage ratio (DSCR)), recent occurrences (*e.g.,* default, excessive vacancies, low Real Estate Assessment Center's (REAC) score), tenant input (as assessed during MORs and as provided directly to HUD), and pending transactions with HUD (*e.g.,* foreclosure, partial payment of claim). The criteria are granular, and there is little room for error/ambiguity in the ratings. If changes in a property's risk classification necessitate an accelerated review, HUD will make this known to the CA as part of HUD's review of the CA's next successive quarterly MOR Plan.

The new schedule will apply to all project-based Section 8 projects, regardless of whether the contract is administered by a PBCA, HUD, or a Traditional Contract Administrator.

*Comment: Pools and data.* One commenter requested clarification on the pool of properties that are included in the percentages that HUD has rated ''above average,'' ''superior,'' and ''satisfactory'' 92 percent of the time. The commenter stated that if the data is coming from iREMs, it may reflect only properties that are currently receiving MORs, which represent only a portion of the country. One commenter stated that the data provided by the MOR Notice was subjective and not based on the number and severity of actual findings. Some commenters requested a breakdown of MOR ratings for the past 5, 10, and 15 years and information about whether the data provided in the MOR Notice is a nationally representative sampling of properties, including the size of the properties.

*HUD response:* The data on percentages was derived from a sample of more than 22,000 MORs completed from 2011 through 2013 on all Section 8–assisted properties; this includes a period of time during which MORs were being completed annually. HUD believes that the data is sufficiently representative to inform its policy development. A review of MORs completed from 2014 through 2015 showed a similar scoring distribution as the 2011–2013 sample, though the total number of completed reviews was smaller. In each of the years from 2011 through 2015, a majority of properties (average of 53 percent) has been rated ''satisfactory,'' with roughly 41 percent receiving an ''above average'' or ''superior'' rating, and 6 percent receiving a ''below average'' or ''unsatisfactory'' score. More recently,

for the years 2016 through 2020, 47 percent of properties received a ''satisfactory'' rating, with 45 percent rated ''above average'' or ''superior,'' and 8 percent rated ''below average'' or ''unsatisfactory.''

*E. Other Comments*

*Comment: Changes to MOR schedule.* One commenter recommended that properties that are ''Not Troubled'' and have a ''Superior'' score should be rewarded with a 48-month time frame before scheduling another MOR, which would incentivize owners and agents to achieve a higher score. Another commenter suggested that all properties with a rating of ''Satisfactory'' or below be reviewed every 12 months and those with a ''Not Troubled'' risk rating and a score of ''Above Average'' or higher be reviewed every 24 months. One commenter wrote that a building with a ''Below Average'' or ''Unsatisfactory'' rating should have an MOR once per year and a ''Satisfactory'' or ''Above Average'' or ''Superior'' rating should have an MOR once every 2 years. One commenter suggested reviewing any property that is considered ''Troubled'' or ''Potentially Troubled'' every 12 months regardless of the previous MOR rating and stipulating that no property will go longer than 24 months without a review. Another commenter recommended that HUD maintain the current MOR schedule. One commenter stated that a project with a rating of ''Not Troubled'' and an MOR score of ''Satisfactory'' would have little incentive to improve if that is all that is needed to receive an MOR 36 months from the previous MOR.

*HUD response:* HUD adopted changes to the proposed schedule based on its consideration of these comments. The final schedule is considered to present the minimum burden to owners while maintaining adequate oversight of management operations and owner compliance. Scheduling MORs based on past performance and establishing risk-rating protocols constitutes a major step in HUD's efforts to streamline its management of assets. HUD believes the final schedule is a good compromise that strikes the right balance.

*Comment: Use limited reviews in lieu of fewer reviews.* The commenter wrote that although some strain is put on HUD and project resources in conducting limited reviews, HUD does not explain how a ''limited review'' puts an undue strain on HUD and project resources to justify restructuring the MOR schedule. The commenter suggested that HUD should avoid risking the widespread deterioration and decline in housing projects due to a lack of adequate oversight, which could also ultimately result in the need for increased compensatory resources. The commenter requested that HUD provide the reasons behind its assumption that a more limited review of housing projects alone would not ease the strain on resources while retaining the virtue of regular oversight.

*HUD response:* The proposed streamlining of management reviews represents HUD's effort to respond to OIG recommendations [3] and criticisms from industry partners. Future research may suggest other adjustments to the frequency and scope of reviews, but given the consistent ''Above Average,'' ''Superior,'' and ''Satisfactory'' ratings for most projects, HUD believes that moving to fewer reviews for such projects is justified.

*Comment: Require properties to submit a report to HUD annually that assesses the current level of compliance and add incentives for compliance.* A commenter stated that in conjunction with the new performance-based MOR schedule, HUD should require properties to submit a report to HUD annually that assesses their current level of compliance, which will help HUD reduce costs while allowing HUD to focus its staff and resources on areas that require greater attention. The commenter explained that the report need not be burdensome to those properties that qualify to forgo scheduling an MOR with HUD annually, but the report should consist of enough relevant data that HUD can determine a property's compliance by means of a quick review. The commenter wrote that the report could provide HUD with a consistent form of documentation and help to ensure that properties with consistently high marks do not lower their standards inadvertently or out of convenience or apathy due to the new MOR schedule. The commenter submitted that depending on the cost savings HUD realizes, HUD could include an incentive process for those properties that remain accountable by submitting reports to HUD on an annual basis. The commenter suggested that by providing an incentive to properties that remain compliant, other properties may actively seek high ratings, which will further alleviate costs to HUD and allow even more staff and resources to be used in areas that need greater attention.

*HUD response:* HUD's view is that an owner would have little incentive to report anything other than full compliance when less than full compliance would likely induce another review. Thus, HUD believes that such certifications would have little if any substantive impact on project performance. In contrast, HUD believes that the promise of less frequent MORs will incentivize property owners to strive for higher performance. HUD and CAs will continue to perform additional MORs when warranted.

*Comment: Eliminate redundancies.* One commenter recommended that HUD eliminate the physical inspection part of the MOR, because REAC conducts extensive inspections on a 1- to 3-year schedule. The commenter also recommended removing the financial management/procurement portion of the MOR, since REAC evaluates financial statement data. The commenter noted that eliminating redundancies would increase efficiency and reduce costs. One commenter stated that MORs should focus exclusively on areas that are not covered by other reviews—specifically, eliminating excess HUD subsidy payments. The commenter believes that the prospect of discovering overpayment of subsidy merits a continuation of annual MORs.

*HUD response:* Although some elements of the REAC and MOR assessments overlap, each serves a distinct and valuable purpose with respect to HUD's asset management oversight responsibilities. REAC physical inspections provide an objective assessment of a property's physical condition and are not meant to consider housekeeping issues that may also affect the physical condition of the property. The physical assessment component of the MOR supplements the REAC physical inspection and provides additional insight into the physical condition of the property. The MOR is meant to assess the overall management of the property, including management's ability to maintain a property in decent, safe, and sanitary condition. The financial management/procurement elements analyzed in an MOR are supplemental to those assessed via an audited financial statement. The MOR provides an assessment of the day-to-day financial management of a property, often resulting in recommendations for improvements to such things as cash controls. In addition, a review performed by HUD staff or the CA, who are experienced in multifamily property management, provides a necessary perspective that is different from that of a REAC inspector. The MOR also evaluates ''rent readiness,'' enabling HUD staff and CAs to determine where improvements may be warranted. The MOR results help to inform REAC

[3] Audit Report 2010–LA–0001: ''HUD's Performance-Based Contract Administration Contract Was Not Cost Effective.'' See ''Conclusion'' on page 19.

inspection scheduling and the determination of whether other financial reporting or follow up may be required.

*Comment: Need for staff training.* One commenter noted that CAs often identify needed improvements to management as part of the MOR. The commenter explained that in situations where a new property owner or management company has been hired at a project that is in a 3-year MOR cycle, training may be needed to assure that the project does not deteriorate.

*HUD response:* HUD agrees with the commenter and has revised the regulation to require an MOR within 6 months of a change in ownership or management.

*Comment: Other suggestions.* A commenter stated that HUD should consider a quantitative and qualitative evaluation of the costs and benefits to properties from MORs and how properties' MOR ratings are likely to be affected with less-frequent monitoring. The commenter also suggested that HUD consider a delay in implementing the performance-based approach until an evaluation on the outcomes of not performing MORs can be conducted. The commenter recommended that HUD consider evaluating the impacts based on the portion of the portfolio that is currently not being monitored by CAs to validate their assumptions. Another commenter suggested using the prevalence of EIV discrepancies, voucher programs, and development types (*e.g.,* elderly) when determining the frequency of site reviews.

*HUD response:* Several alternatives for MOR procedures to reduce the burden of annual reviews on satisfactorily operating properties were considered. The proposed schedule is considered to present the minimum burden to owners, while maintaining adequate oversight of management operations and owner compliance. The Department will monitor and evaluate the impact of the new performance-based schedule on property compliance and revisit the schedule, if needed.

*F. Scope*

*Comment: Mark-to-Market projects.* One commenter questioned whether HUD intends to adopt the proposed MOR schedule for projects subject to renewal under Mark-to-Market. The commenter suggested that HUD could provide a 36-month, 24-month, and 12-month schedule for such projects by allowing scaled-back limited reviews between the full MORs for high-performance properties, which could include analyses of properties' financial statements, surplus cash analysis, the risk-rating system, and/or other information that HUD collects to ensure regulatory compliance. Another commenter requested clarification as to whether the MOR schedule would change for restructured Mark-to-Market properties under Section 519 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), for which HUD had previously provided guidance that MORs would be required annually. The commenter also recommended that the inspections for such properties align with the new proposed schedule.

*HUD response:* Section 519(b)(1) of MAHRA requires CAs to monitor the status of projects renewed under Mark-to-Market at least annually. Therefore, this schedule would not and could not apply to restructured Mark-to-Market properties.

*Comment: Other programs.* One commenter requested clarification about the applicability of the regulatory changes to other programs, noting that the instructions and applicability of form HUD–9834 indicate that properties other than those with a Section 8 HAP contract utilize the form for monitoring and oversight.

*HUD response:* The performance-based MOR schedule and the associated regulatory changes apply only to projects covered by this Final Regulation.

*G. Other Suggested Changes and Questions*

*Comment: Codify the schedule by regulations.* Some commenters recommended that HUD should write a permanent schedule in the regulations. One commenter recommended that HUD use the physical inspection schedule at 24 Code of Federal Regulations (CFR) § 200.855 and § 200.857 as a model for writing a permanent schedule in regulations that permit 3-, 2-, and 1-year reviews.

*HUD response:* If HUD determines a change in the schedule is needed, a new schedule will be established via **Federal Register** Notice, following a review and comment period. Use of a **Federal Register** Notice to dictate the schedule rather than codifying the schedule in regulation provides HUD with greater latitude to modify the schedule going forward, if merited.

*Comment: Additional reviews conflict with State and local laws.* Commenters wrote that providing for HUD to inspect project operation and units at any time may conflict with State and local laws, which often require notice before entering a resident's unit. The commenters suggested that HUD revise the language to clarify that notice is required.

*HUD response:* HUD Account Executives and CAs are generally familiar with local requirements. All independent inspections performed by HUD will continue to be in compliance with State and local laws.

*Comment: Other applications.* One commenter recommended that HUD consider similar reduction principles when developing the next iteration of the Public Housing Assessment System and the Section 8 Management Assessment Program.

*HUD response:* While HUD appreciates this comment, this recommendation is outside the scope of this rulemaking as the Public Housing Assessment System and the Section 8 Management Assessment Program fall under the purview of the Assistant Secretary for Public and Indian Housing.

*Comment: The Notice fails to provide adequate notice for certain persons to comment on the proposed Paperwork Reduction Act (PRA) changes.* One commenter asked how HUD will ensure that the solicitation of comments, as required under the PRA in accordance with 5 CFR 1320.8, is adequately provided to certain persons, especially those who are elderly or lack computers.

*HUD response:* The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520) and regulations at 5 CFR 1320 require that agencies publish requests for comments on paperwork in the **Federal Register**, which HUD has done for HUD's form HUD–9834, ''Management Review for Multifamily Housing Projects.'' HUD will also ensure updates are processed in accordance with applicable notice and comment procedures set forth by the PRA. As for the ''certain persons, including those who are elderly or lack computers,'' referenced by the commenter, HUD notes that public libraries provide access to computers.

## IV. Findings and Certifications

*Regulatory Review—Executive Orders 12866, 13563, and 13771*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This rule was determined to be a non-significant regulatory action under section 3(f) of Executive Order 12866.

Executive Order 13563 (Improving Regulation and Regulatory Review) directs executive agencies to analyze

regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule is part of HUD's retrospective review carried out under Executive Order 13563.

*Need for Regulatory Action*

Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' Because the schedule for MORs was established by regulation, HUD must use rulemaking to reduce the burden of annual MORs. Moreover, HUD has determined that the current MOR schedule places a strain on HUD resources and on projects that consistently receive high marks on their MORs. This fact, and the costs placed on projects to prepare for an MOR and that result from the interruption in normal operations caused by an MOR, makes reducing this burden an important topic for rulemaking. As a result, consistent with Executive Order 13563, this rulemaking is intended to modify, streamline, or repeal burdensome regulations.

*Discussion of Costs and Benefits*

This final rule will provide consistency across the project-based Section 8 programs administered by the Office of Multifamily Housing Programs for the scheduling of MORs and allow HUD to issue the schedule by publishing it in the **Federal Register**, subject to public comment. The purpose of an MOR is to verify property compliance with the terms of the HAP contract. The MOR process is a lengthy and resource-heavy process, involving the inspection of residents' units; a review of owner compliance with civil rights regulations; a review of complaints from residents, congressional inquiries, and media reports; and a review of any contractual violations and imposed sanctions. Because many of the properties that receive assistance under a Section 8 HAP contract have consistently received high marks on their MORs, reducing the frequency of MORs will result in fewer interruptions in project operations. HUD also concludes that deficiencies discovered as part of the MOR of a property that receives a high mark are typically less than the costs to the project of preparing for and participating in the MOR.

*Information Collection Requirements*

The information collection requirements for this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2502–0178. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The overall burden of this collection will be reduced, however, by reducing the frequency of MORs for properties that perform well.

*Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment was made as part of the proposed rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available for inspection on *Regulations.gov*.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This rule does not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is HUD's position that the burden reduction measures provided by this rule would not have a significant economic impact (beneficial or adverse) on a substantial number of small entities.

As noted earlier in this preamble, this rule is one of the regulatory actions being undertaken as part of HUD's Retrospective Review Plan, established in accordance with Executive Order 13563. The primary focus of this rule is to reduce burden across all project owners regardless of size. The focus of MORs is on ensuring that the units that HUD subsidizes are decent, safe, and sanitary and are made available to eligible tenants in a nondiscriminatory manner. These are not requirements that HUD can alter on the basis that a project owner is a small entity. However, as noted above, this rule reduces burden for all project owners, large or small, that manage their properties well in accordance with HUD regulations and score well under the MOR rating system.

*Executive Order 13132, Federalism*

Executive Order 13132 (''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

*Catalog of Federal Domestic Assistance.*

The Catalog of Federal Domestic Assistance number applicable to the programs that would be affected by this rule is 14.195.

**List of Subjects**

*24 CFR Part 880*

Annual contributions contract, Audit, Construction, Contract administration, Financing, Grant programs—housing and community development, Housing assistance, Housing assistance payments contract, Management, New construction, Owner, Public housing agency, Property standards, Rent subsidies, Reporting and recordkeeping requirements, Section 8, Tenants, Units.

*24 CFR Part 881*

Annual contributions contract, audit, contract administration, conversion, housing assistance, Grant programs—housing and community development, housing assistance payments contract, inspections, low-income family, owner, public housing agency, Rent subsidies, Reporting and recordkeeping

requirements, Section 8, Substantial rehabilitation, Tenants, Units.

*24 CFR Part 883*

Annual contributions contract, Audit, Contract administration, Housing finance agencies, Grant programs—housing and community development, Housing assistance, Housing assistance payments contract, Low-income family, Owner, Rent subsidies, Reporting and recordkeeping requirements, Section 8, Substantial rehabilitation, State agencies, Tenants, Units.

*24 CFR Part 884*

Annual contributions contract, Audit, Contract administration, Conversion, Grant programs—housing and community development, Housing assistance, Housing assistance payments contract, Income limit, Inspections, Low-income family, Maintenance, New construction, Owner, Public housing agency, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Rural housing, Section 8, Security deposits, Tenants, Units, Utility deposits.

*24 CFR Part 886*

Audit, Contract administration, Grant programs—housing and community development, Housing assistance, Housing assistance payments contract, Income, Inspection, Lead poisoning, Maintenance, Marketing, Mortgages, Owner, Rehabilitation, Rent subsidies, Reporting and recordkeeping requirements, Section 8, Security deposits, Special allocations, Tenants, Units, Utility deposits.

*24 CFR Part 891*

Aged, Grant programs—housing and community development, Capital advances, Individuals with disabilities, Loan programs—housing and community development, Project rental assistance, Rent subsidies, Reporting and recordkeeping requirements, Section 8, Supportive housing for persons with disabilities, Supportive services, Tenants, Units.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 880, 881, 883, 884, 886, and 891 as follows:

## PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

■ 1. The authority citation for 24 CFR part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

■ 2. Revise § 880.612 to read as follows:

**§ 880.612 Management and occupancy reviews.**

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months following the change in ownership or management.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

## PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET–ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

■ 3. The authority citation for 24 CFR part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 4. Revise § 884.224 to read as follows:

**§ 884.224 Management and occupancy reviews.**

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

## PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

■ 5. The authority citation for 24 CFR part 886 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 6. Revise § 886.130 to read as follows:

**§ 886.130 Management and occupancy reviews.**

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

**§ 886.309 [Amended]**

■ 7. In § 886.309, in paragraph (e), remove ''§ 886.327'' and add in its place ''§ 886.328''.

■ 8. Revise § 886.335 to read as follows:

**§ 886.335 Management and occupancy reviews.**

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

## PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 9. The authority citation for 24 CFR part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 10. Add § 891.582 to read as follows:

**§ 891.582 Management and occupancy reviews.**

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the HAP Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

**Julia R. Gordon,**

*Assistant Secretary for Housing–Federal Housing Commissioner.*

[FR Doc. 2022–13426 Filed 6–24–22; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 310

**[Docket ID: DoD–2022–OS–0067]**

**RIN 0790–AL32**

## Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary of Defense, Department of Defense (DoD).

**ACTION:** Direct final rule with request for comments.

**SUMMARY:** The DoD is amending this part to remove the exemption rules associated with three systems of records notices (SORNs) established for the Department of the Air Force and two SORNs established for the Office of the Secretary of Defense under the Privacy Act of 1974, as amended. Elsewhere in this issue of the **Federal Register**, the DoD is giving concurrent notice of the rescindment of these same five SORNs as part of a notice rescinding numerous other SORNs. The DoD is also amending this part to remove an exemption rule associated with one SORN established for the Marine Corps that was previously rescinded by the DoD. This rule is being published as a direct final rule as the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published.

**DATES:** The rule is effective on September 6, 2022 unless comments are received that would result in a contrary determination. Comments will be accepted on or before August 26, 2022. If adverse comment is received, the Department will publish a timely withdrawal of the direct final rule.

**ADDRESSES:** You may submit comments, identified by docket number, Regulatory Identifier Number (RIN), and title, by any of the following methods.

* Federal eRulemaking Portal: *https://www.regulations.gov.*

Follow the instructions for submitting comments.

* Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rahwa Keleta, Defense Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil*; (703) 571–0070.

**SUPPLEMENTARY INFORMATION:**

### Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemptions. The rule explains why exemptions are being claimed for the associated system of records. During the rule-making process, the public are invited to comment, which DoD will consider before the issuance of a final rule implementing those exemptions. The final rules implementing exemptions for DoD systems of records are codified in DoD's privacy regulation at 32 CFR part 310.

When a system of records is no longer required to be collected or maintained, the system of records may be discontinued. The notice for that system of record is rescinded in the **Federal Register**, and the records covered by the rescinded system of records are lawfully transferred or disposed of in accordance with applicable requirements. At the time of rescindment or following rescindment for the system of records notice, Federal agencies will seek to also rescind the associated exemption rules within the Code of Federal Regulations.

### Direct Final Rulemaking

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rule, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue that would have warranted a substantive response had it been submitted in response to a standard notice of a proposed rule. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

The DoD is amending 32 CFR part 310 by rescinding the following regulation provisions (in their entirety) due to the underlying SORNs being rescinded (concurrently by associated public notice) or having been previously rescinded through public notice:

- 32 CFR 310.14(f)(12), *System identifier and name.* F031 497IG A, Sensitive Compartmented Information Personnel Records.
- 32 CFR 310.14(f)(14) *System identifier and name.* F031 497IG B, Special Security Case Files.
- 32 CFR 310.14(f)(15) *System identifier and name.* F031 AF SP N, Special Security Files.
- 32 CFR 310.29(c)(2), *System identifier and name.* DWHS P28, Personnel Security Operations Files.
- 32 CFR 310.29(c)(8), *System identifier and name.* DWHS P29, Personnel Security, Suitability, and Homeland Security Presidential Directive 12 (HSPD–12) Adjudications.
- 32 CFR 310.17, consisting of paragraph (a)(1), *System identifier and name.* MIN00001, Personnel and Security Eligibility and Access Information System.

**Regulatory Analysis**

**Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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. It has been determined that this rule is not a significant regulatory action under these Executive orders.

**Congressional Review Act**

This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)**

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency certified that this Privacy Act rule does not have significant economic impact on a substantial number of small entities because this rule is concerned only with the administration of Privacy Act systems of records within the DoD.

**Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)**

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''**

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that it will not significantly or uniquely affect small governments.

**Executive Order 13132, ''Federalism''**

It has been determined that this rule does not have federalism implications. This rule does 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.

**Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''**

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

**List of Subjects in 32 CFR Part 310**

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

## PART 310—[AMENDED]

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

**§ 310.14 [Amended]**

■ 2. Section 310.14 is amended by removing and reserving paragraphs (f)(12), (14), and (15).

**§ 310.17 [Removed and Reserved]**

■ 3. Section 310.17 is removed and reserved.

**§ 310.29 [Amended]**

■ 4. Section 310.29 is amended by removing and reserving paragraphs (c)(2) and (8).

Dated: June 21, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–13665 Filed 6–24–22; 8:45 am]

**BILLING CODE 5001–06–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 9 and 721

**[EPA–HQ–OPPT–2019–0494; FRL–7584–01–OCSPP]**

**RIN 2070–AB27**

## Significant New Use Rules on Certain Chemical Substances (19–4.F)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs). This action requires persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. This action further requires that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), and EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken any risk management actions as are required as a result of that determination.

**DATES:** This rule is effective on August 26, 2022. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on July 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. 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:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions. This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA, which would include the SNUR requirements. The EPA policy in

support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

*B. How can I access the docket?*

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0494, is available at *https://www.regulations.gov* and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

## II. Background

*A. What action is the Agency taking?*

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances which were the subject of PMNs P–17–312, P–17–313, P–17–314, P–17–315, P–17–316, P–17–317, P–18–9, P–18–11, P–18–170, P–18–185, P–18–190, P–18–191, P–18–223, P–18–285, P–18–300, P–18–394, P–18–404, P–19–12, P–19–31, and P–19–72. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity. EPA is not currently finalizing the SNUR for the substance which was the subject of PMN P–19–71 because the Agency has received new data on the substance. EPA will review the new data and address this proposed SNUR in a future notice.

Previously, in the **Federal Register** of November 4, 2019 (84 FR 59335) (FRL–10000–54), EPA proposed SNURs for these chemical substances and five other SNURs. EPA finalized the proposed SNURs for P–16–548, P–17–398, P–17–399, P–18–1, and P–18–28 in a previous **Federal Register** notice of August 18, 2021 (86 FR 46133) (FRL–8000–02–OCSPP). More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** document proposing the SNURs. The docket includes information considered by the Agency in developing the proposed and final rules, including the public comments received on the proposed rules that are described in Unit IV.

*B. What is the Agency's authority for taking this action?*

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

*C. Do the SNUR general provisions apply?*

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

## III. Significant New Use Determination

*A. Determination Factors*

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit.

During its review of the chemical substances that are the subjects of these SNURs and as further discussed in Unit VI., EPA identified potential risk concerns associated with other circumstances of use that, while not intended or reasonably foreseen, may occur in the future. EPA is designating those other circumstances of use as significant new uses.

*B. Procedures for Significant New Uses Claimed as Confidential Business Information (CBI)*

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA

will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

## IV. Public Comments

EPA received public comments from three identifying entities on the proposed rule. The Agency's responses are presented in the Response to Public Comments document that is available in the docket for this rule. Based on these comments EPA made a change to the SNUR for P–17–312 regarding calculation of surface water concentrations as described in the response to comments document.

## V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNUR, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation proposed to be assigned in the regulatory text section. This final rule makes the final assignment to set the CFR citation for the chemical substance.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

## VI. Rationale and Objectives of the Rule

### *A. Rationale*

The chemical substances that are the subjects of these SNURs received ''not likely to present an unreasonable risk'' determinations under TSCA section 5(a)(3)(C) based on EPA's review of the intended, known, and reasonably foreseen conditions of use. However, EPA has identified other circumstances that, should they occur in the future, even if not reasonably foreseen, may present risk concerns. Specifically, EPA has determined that deviations from the protective measures identified in the PMN submissions could result in changes in the type or form of exposure to the chemical substances, increased exposures to the chemical substances, and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances. These SNURs identify as a significant new use manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the protective measures identified in the submissions. As a result, those significant new uses cannot occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

### *B. Objectives*

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.
- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

## VII. Applicability of the Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When the chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, the identities of many of the chemical substances subject to this rule have been claimed as confidential (per 40 CFR 720.85). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

EPA designated November 4, 2019 (the date of publication of the proposed rule in the **Federal Register**) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who began commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under TSCA section 5 allowing manufacture or processing to proceed.

## VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce.*

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

## IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

## X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

## XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review*

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act (PRA)*

According to PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

### *C. Regulatory Flexibility Act (RFA)*

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.,* I hereby certify that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal

year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

*D. Unfunded Mandates Reform Act (UMRA)*

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

*E. Executive Order 13132: Federalism*

This action will not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it is not expected to have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action will not have Tribal implications as specified under Executive Order 13175 (65 FR 67249, November 9, 2000), because it is not expected to have substantial direct effects on Indian Tribes or significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action because this action does not involve any technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

*K. Congressional Review Act (CRA)*

Pursuant to the CRA, 5 U.S.C. 801 *et seq.,* EPA will submit a rule report containing this rule and other required information to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects**

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 721*

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 15, 2022.

**Tala Henry,**

*Deputy Director, Office of Pollution Prevention and Toxics.*

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

## PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11384 through 721.11389, 721.11394 through 721.11400, 721.11404 through 721.11410, and 721.11411 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *

| 40 CFR citation | OMB control No. |
|---|---|
| * * * * * | |
| **Significant New Uses of Chemical Substances** | |
| * * * * * | |
| 721.11384 | 2070–0012 |
| 721.11385 | 2070–0012 |
| 721.11386 | 2070–0012 |
| 721.11387 | 2070–0012 |
| 721.11388 | 2070–0012 |
| 721.11389 | 2070–0012 |
| * * * * * | |
| 721.11394 | 2070–0012 |
| 721.11395 | 2070–0012 |
| 721.11396 | 2070–0012 |
| 721.11397 | 2070–0012 |
| 721.11398 | 2070–0012 |
| 721.11399 | 2070–0012 |
| 721.11400 | 2070–0012 |
| * * * * * | |
| 721.11404 | 2070–0012 |
| 721.11405 | 2070–0012 |
| 721.11406 | 2070–0012 |
| 721.11407 | 2070–0012 |
| 721.11408 | 2070–0012 |
| 721.11409 | 2070–0012 |
| * * * * * | |
| 721.11411 | 2070–0012 |

| 40 CFR citation | OMB control No. |
|---|---|
| * * * * * | |

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## PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

### Subpart E—Significant New Uses for Specific Chemical Substances

■ 4. Add §§ 721.11384 through 721.11389, §§ 721.11394 through 721.11400, §§ 721.11404 through 721.11409, and § 721.11411 to read as follows:

Sec.

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721.11384 Organic acid, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted amine-disubstituted polypropylene glycol reaction products (generic).

721.11385 Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 2-(chloromethyl)oxirane and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], reaction products with disubstituted amine and disubstituted polypropylene glycol, organic acid salts (generic)

§ 721.11386 Organic acid, 2-substituted-, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted amine-disubstituted polypropylene glycol reaction products (generic).

§ 721.11387 Phenol, 4,4′-(1-methylethylidene)bis-, polymer with .alpha.-(2-substituted-methylethyl)-.omega.-(2-substituted-methylethoxy)poly[oxy(methyl-1,2-ethanediyl)], 2-(chloromethyl)oxirane and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], alkylphenyl ethers, reaction products with disubstituted amine, organic acid salts (generic).

§ 721.11388 Organic acid, compds. with bisphenol A-epichlorohydrin-disubstituted polypropylene glycol-polypropylene glycol diglycidyl ether polymer alkylphenyl ethers-disubstituted amine reaction products (generic).

§ 721.11389 Organic acid, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted polypropylene glycol reaction products (generic).

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§ 721.11394 Phosphonic acid, dimethyl ester, polymer with alkyl diols (generic).

§ 721.11395 1H-Imidazole, 1,2,4,5-tetramethyl-.

§ 721.11396 1-Propanaminium, N,N′-(oxydi-2,1-ethanediyl)bis[3-chloro-2-hydroxy-N,N-dimethyl-, chloride (1:2).

§ 721.11397 Fatty acid, polymer with alkanedioic acid dialkyl ester, hydroxyl alkyl substituted alkanediol, substituted carbomonocycle and alkylol substituted alkane (generic).

§ 721.11398 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl amide, polymers with epichlorohydrin and trimethylolpropane, sodium salts (generic)

§ 721.11399 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substitutedbutyl [3-[2-[1-[[(substitutedphenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]methyl amide, polymers with epichlorohydrin and trimethylolpropane, sodium salts (generic)

§ 721.11400 Alkane, bis(alkoxymethyl)-dimethyl- (generic).

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§ 721.11404 Butanedioic acid, 2-methylene-, polymer with 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonic acid, sodium zinc salt.

§ 721.11405 Heteromonocycle, alkenoic 1:1 salt, polymer with .alpha.-(2-methyl-1-oxo-2-propen-1-yl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) and methyl-alkenoic acid (generic).

§ 721.11406 Substituted benzylic ether polyethylene glycol alkyl ether derivative (generic).

§ 721.11407 Alkylmultiheteroatom, 2-functionalisedalkyl-2-hydroxyalkyl-, polymer with alkylheteroatom-multialkylfunctionalised carbomonocycleheteroatom and multiglycidylether difunctionalised polyalkylene glycol (generic).

§ 721.11408 Benzenedicarboxylic acid, reaction products with isobenzofurandione and diethylene glycol (generic).

§ 721.11409 Formaldehyde, polymer with N1-(2-aminoethyl)-alkanediamine, 5-amino-1,3,3-trimethylcyclohexanemethanamine, 2-(chloromethyl)oxirane, 4,4′-(1-methylethylidene)bis[phenol] and .alpha.-hydro-.omega.-hydroxypoly(oxy-1,2-ethanediyl) (generic).

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§ 721.11411 1-Butanol, reaction products with 2-[(2-propen-1-yloxy)methyl]oxirane.

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§ 721.11384 Organic acid, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted amine-disubstituted polypropylene glycol reaction products (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as organic acid, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted amine-disubstituted polypropylene glycol reaction products (PMN P–17–312) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in the generation of a dust, mist, or aerosol.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=78. When making the computation of estimated surface water concentrations calculation under § 721.91 for this substance, you may subtract 90% from the highest expected daily release if the substance is subject to primary and secondary wastewater treatment as defined in 40 CFR part 133.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11385 Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 2-(chloromethyl)oxirane and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], reaction products with disubstituted amine and disubstituted polypropylene glycol, organic acid salts (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenol, 4,4′-(1-methylethylidene)bis-, polymer with 2-(chloromethyl)oxirane and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], reaction products with disubstituted amine and disubstituted polypropylene glycol, organic acid salts (PMN P–17–313) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in the generation of a dust, mist, or aerosol.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=78.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11386 Organic acid, 2-substituted-, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted amine-disubstituted polypropylene glycol reaction products (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as organic acid, 2-substituted-, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted amine-disubstituted polypropylene glycol reaction products (PMN P–17–314) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in the generation of a dust, mist, or aerosol.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=78.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11387 Phenol, 4,4′-(1-methylethylidene)bis-, polymer with .alpha.-(2-substituted-methylethyl)-.omega.-(2-substituted-methylethoxy)poly[oxy(methyl-1,2-ethanediyl)], 2-(chloromethyl)oxirane and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], alkylphenyl ethers, reaction products with disubstituted amine, organic acid salts (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as phenol, 4,4′-(1-methylethylidene)bis-, polymer with .alpha.-(2-substituted-methylethyl)-.omega.-(2-substituted-methylethoxy)poly[oxy(methyl-1,2-ethanediyl)], 2-(chloromethyl)oxirane and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], alkylphenyl ethers, reaction products with disubstituted amine, organic acid salts (PMN P–17–315) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in the generation of a dust, mist, or aerosol.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 78.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11388 Organic acid, compds. with bisphenol A-epichlorohydrin-disubstituted polypropylene glycol-polypropylene glycol diglycidyl ether polymer alkylphenyl ethers-disubstituted amine reaction products (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as organic acid, compds. with bisphenol A-epichlorohydrin-disubstituted polypropylene glycol-polypropylene glycol diglycidyl ether polymer alkylphenyl ethers-disubstituted amine reaction products (PMN P–17–316) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in the generation of a dust, mist, or aerosol.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=78.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11389 Organic acid, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted polypropylene glycol reaction products (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as organic acid, compds. with bisphenol A-epichlorohydrin-polypropylene glycol diglycidyl ether polymer-disubstituted polypropylene glycol reaction products (PMN P–17–317) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in the generation of a dust, mist, or aerosol.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=78.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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**§ 721.11394 Phosphonic acid, dimethyl ester, polymer with alkyl diols (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as phosphonic acid, dimethyl ester, polymer with alkyl diols (PMN P–18–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use

the substance in a manner that generates a dust, mist, or aerosol.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=300.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11395 1H-Imidazole, 1,2,4,5-tetramethyl-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1H-imidazole, 1,2,4,5-tetramethyl- (PMN P–18–11; CAS No. 1739–83–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (g).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=7.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11396 1-Propanaminium, N,N′-(oxydi-2,1-ethanediyl)bis[3-chloro-2-hydroxy-N,N-dimethyl-, chloride (1:2).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-propanaminium, N,N′-(oxydi-2,1-ethanediyl)bis[3-chloro-2-hydroxy-N,N-dimethyl-, chloride (1:2) (PMN P–18–170; CAS No. 96320–92–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposures.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=164.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11397 Fatty acid, polymer with alkanedioic acid dialkyl ester, hydroxyl alkyl substituted alkanediol, substituted carbomonocycle and alkylol substituted alkane (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acid, polymer with alkanedioic acid dialkyl ester, hydroxyl alkyl substituted alkanediol, substituted carbomonocycle and alkylol substituted alkane (PMN P–18–185) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11398 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl amide, polymers with epichlorohydrin and trimethylolpropane, sodium salts (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,5-furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl amide, polymers with epichlorohydrin and trimethylolpropane, sodium salts (PMN P–18–190) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance other than as a pigment dispersing aid for pigments in inkjet printing inks.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11399 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substitutedbutyl [3-[2-[1-[[(substitutedphenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]methyl amide, polymers with epichlorohydrin and trimethylolpropane, sodium salts (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,5-furandione, polymer with ethenylbenzene, 4-hydroxy-substitutedbutyl [3-[2-[1-[[(substitutedphenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]methyl amide, polymers with epichlorohydrin and trimethylolpropane, sodium salts (PMN P–18–191) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance other than as a pigment dispersing aid for pigments in inkjet printing inks.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11400 Alkane, bis(alkoxymethyl)-dimethyl- (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkane, bis(alkoxymethyl)-dimethyl- (PMN P–18–223) is subject to reporting under

this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance beyond the confidential annual production volume specified in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

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**§ 721.11404 Butanedioic acid, 2-methylene-, polymer with 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonic acid, sodium zinc salt.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as butanedioic acid, 2-methylene-, polymer with 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonic acid, sodium zinc salt (PMN P–18–285; CAS No. 2220235–78–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=143.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11405 Heteromonocycle, alkenoic 1:1 salt, polymer with .alpha.-(2-methyl-1-oxo-2-propen-1-yl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) and methyl-alkenoic acid (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteromonocycle, alkenoic 1:1 salt, polymer with .alpha.-(2-methyl-1-oxo-2-propen-1-yl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) and methyl-alkenoic acid (PMN P–18–300) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in particles less than 50 microns. It is a significant new use to use the substance in a manner that results in consumer inhalation or dermal exposure. It is a significant new use to use the substance other than as sealed single-use packets.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11406 Substituted benzylic ether polyethylene glycol alkyl ether derivative (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted benzylic ether polyethylene glycol alkyl ether derivative (PMN P–18–394) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=4.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11407 Alkylmultiheteroatom, 2-functionalisedalkyl-2-hydroxyalkyl-, polymer with alkylheteroatom-multialkylfunctionalised carbomonocycleheteroatom and multiglycidylether difunctionalised polyalkylene glycol (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylmultiheteroatom, 2-functionalisedalkyl-2-hydroxyalkyl-, polymer with alkylheteroatom-multialkylfunctionalised carbomonocycleheteroatom and multiglycidylether difunctionalised polyalkylene glycol (PMN P–18–404) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11408 Benzenedicarboxylic acid, reaction products with isobenzofurandione and diethylene glycol (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzenedicarboxylic acid, reaction products with isobenzofurandione and diethylene glycol (PMN P–19–12) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11409 Formaldehyde, polymer with N1-(2-aminoethyl)-alkanediamine, 5-amino-1,3,3-trimethylcyclohexanemethanamine, 2-(chloromethyl)oxirane, 4,4′-(1-methylethylidene)bis[phenol] and .alpha.-hydro-.omega.-hydroxypoly(oxy-1,2-ethanediyl) (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as formaldehyde, polymer with N1-(2-aminoethyl)-alkanediamine, 5-amino-1,3,3-trimethylcyclohexanemethanamine, 2-(chloromethyl)oxirane, 4,4′-(1-methylethylidene)bis[phenol] and .alpha.-hydro-.omega.-hydroxypoly(oxy-1,2-ethanediyl) (PMN P–19–31) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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**§ 721.11411 1-Butanol, reaction products with 2-[(2-propen-1-yloxy)methyl]oxirane.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-butanol, reaction products with 2-[(2-propen-1-yloxy)methyl]oxirane (PMN P–19–72) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

* * * * *

[FR Doc. 2022–13338 Filed 6–24–22; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 150623546–6395–02; RTID 0648–XC071]**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2022 Closure for Spiny Lobster in the U.S. Exclusive Economic Zone Around Puerto Rico

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) for spiny lobster in the U.S. exclusive economic zone (EEZ) around Puerto Rico. NMFS has determined that the annual catch limit (ACL) for spiny lobster in Puerto Rico was exceeded based on average landings during the 2017 through 2019 fishing years. Therefore, NMFS reduces the length of the 2022 fishing season for spiny lobster in the EEZ around Puerto Rico by the amount necessary to ensure that landings do not exceed the ACL in 2022. This AM is necessary to protect the spiny lobster resource in the EEZ around Puerto Rico.

**DATES:** This temporary rule is effective from 12:01 a.m., local time, on July 12, 2022, through September 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Sarah Stephenson, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *sarah.stephenson@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The spiny lobster fishery of the U.S. Caribbean EEZ is managed under the Fishery Management Plan for Spiny Lobster of Puerto Rico and the U.S. Virgin Islands (USVI) (Spiny Lobster FMP). The Spiny Lobster FMP was prepared by the Caribbean Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 26, 2020, NMFS published in the **Federal Register** a notice of availability for three island-based FMPs and requested public comment (85 FR 38350). On September 22, 2020, the Secretary of Commerce approved the island-based FMPs under section 304(a)(3) of the Magnuson-Stevens Act. The island-based FMPs replace the four U.S. Caribbean-wide FMPs—Reef Fish, Spiny Lobster, Queen Conch, Corals and Reef Associated Plants and Invertebrates. The proposed regulations to implement management measures for the island-based FMPs published on May 19, 2022, and the public comment period is open through June 21, 2022 (87 FR 30730). Therefore, the proposed regulations for the island-based FMPs are not yet effective and this temporary rule implements the AM based on the Spiny Lobster FMP under the current regulations at 50 CFR 622.12(a)(3).

The final rule implementing the 2011 Caribbean ACL Amendment, which included Amendment 5 to the Spiny Lobster FMP, among others, established an ACL and AM for spiny lobster in each island management area in the U.S. Caribbean (76 FR 82414, December 30, 2011). The ACL for spiny lobster in the EEZ around Puerto Rico is 327,920 lb (148,742 kg), round weight. In accordance with regulations at 50 CFR 622.12(a)(3), if NMFS estimates that landings have exceeded the spiny lobster ACL, based on an evaluation of a moving multi-year average of landings, NMFS will reduce the length of the fishing season for spiny lobster by the amount necessary to ensure landings do not exceed the ACL. If NMFS determines the ACL was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch, NMFS will not reduce the length of the fishing season.

Puerto Rico commercial landings of spiny lobster for the 2020 and 2021 fishing years are still preliminary and not yet available for management use, and therefore, the 3-year average of

commercial landings from the 2017–2019 fishing years were used in comparison to the ACL. Recreational landings for spiny lobster are not collected and therefore are not used in establishing or evaluating compliance with the ACL. NMFS used spiny lobster landings from the same fishing years in ACL monitoring procedures for the 2021 fishing year. Based on average landings of spiny lobster in Puerto Rico from 2017–2019, NMFS determined that the spiny lobster ACL was exceeded and that the ACL overage was not the result of enhanced data collection or monitoring efforts.

This temporary rule implements an AM for spiny lobster to reduce the length of the 2022 fishing season to ensure that landings do not exceed the spiny lobster ACL in the 2022 fishing year. Therefore, the spiny lobster fishery in the EEZ around Puerto Rico is closed from 12:01 a.m., local time, on July 12, 2022, through September 30, 2022. The EEZ around Puerto Rico consists of those waters lying seaward of the 9-nautical mile (nmi; 16.7-km) boundary around Puerto Rico to the outer boundary of the Puerto Rico management area, as defined in Table 1 of appendix E to 50 CFR part 622.

During the closure period for spiny lobster announced in this temporary rule, both the commercial and recreational sectors are closed. Spiny lobster in or from the EEZ around Puerto Rico may not be harvested, possessed, purchased, or sold, and the bag and possession limits are zero.

## Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.12(a)(3), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, 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 are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rules implementing the spiny lobster ACL and the associated AM have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Such procedures are also contrary to the public interest because of the need to provide certainty about the closure decision, and to expeditiously implement the closure to protect the spiny lobster stock around Puerto Rico. Available average landings from the 2017–2019 fishing years exceeded the ACL. Based on the average fishing rate during this time period, NMFS expects the ACL will be exceeded in the 2022 fishing year and a closure is needed. Providing prior notice and opportunity for comment could interfere with NMFS' ability to publish a final temporary rule and implement the closure until after July 12, 2022, which would negatively affect NMFS' ability to control harvest this fishing year to the ACL.

For the same reasons, there is good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: June 22, 2022.

**Jennifer M. Wallace,**

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

[FR Doc. 2022–13669 Filed 6–24–22; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 87, No. 122
Monday, June 27, 2022

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 272

**[FNS–2022–0005]**

**RIN 0584–AE86**

## Supplemental Nutrition Assistance Program: Revision of Civil Right Data Collection Methods

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Nutrition Service (FNS) proposes to revise Supplemental Nutrition Assistance Program (SNAP) regulations that cover the collection and reporting of race and ethnicity data by State agencies on persons receiving benefits from SNAP. This rule would remove regulatory language that provides an example that State agencies might collect race and ethnicity data by observation (also referred to as ''visual observation'') when participants do not voluntarily provide the information on the application form. Through this rulemaking, FNS intends to improve the quality of data collected for purposes of Federal civil rights law and policy (including Title VI of the Civil Rights Act of 1964). USDA's Food and Nutrition Service is committed to promoting equity and inclusion through its Federal nutrition assistance programs. This regulatory change is consistent with this Administration's priorities and furthers FNS' commitment to build equitable and inclusive systems for nutrition access.

**DATES:** Written comments must be received on or before August 26, 2022 to be assured of consideration.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Send written comments to State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 1320 Braddock Place, 5th floor, Alexandria, VA, 22314.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available via *https://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Maribelle Balbes, Chief, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 1320 Braddock Place, 5th floor, Alexandria, VA 22314, by phone at (703) 605–4272 or via email at: *SM.FN.SNAPSAB@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *Current Policy*

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs receiving Federal financial assistance. Additionally, Department of Justice (DOJ) regulations [1] at title 28 of the Code of Federal Regulations (CFR), § 42.406(a) require all Federal agencies to provide for the collection of racial and ethnic information from applicants and beneficiaries of Federal assistance programs sufficient to permit effective enforcement of Title VI. Accordingly, SNAP regulations at 7 CFR 272.6(g) and (h) require State agencies to collect race and ethnicity data on participating households and report the data to FNS to help ensure program benefits are distributed without regard to race, color, or national origin. FNS uses this data to determine how effectively FNS programs are reaching potential eligible persons and beneficiaries, identify areas where additional outreach is needed, assist in the selection of location for compliance reviews, and complete reports as required.

Per 7 CFR 272.6(g), State agencies that administer SNAP are required to collect data on participants' race and ethnicity in the manner specified by FNS. The regulations provide that the application form must clearly indicate that the information is voluntary and that it will not affect the eligibility or the level of benefits. SNAP regulations at 7 CFR 272.6(g) also require State agencies to develop alternative means of collecting racial and ethnic data on households, such as by observation during the interview, when the information is not provided voluntarily by the household on the application form.

State agencies report aggregate race and ethnicity data to FNS annually via the form FNS–101, ''Participation in Food Programs by Race'' (Office of Management and Budget (OMB) Control Number 0584–0594, expiration 7/31/2023). FNS uses this aggregate data to conduct compliance reviews and investigations, identify trends or disparities that affect participation goals and opportunities to address them, and identify any potential adverse or disproportionate impacts when developing program policy.

### *Review of Visual Observation Policy and Proposed Regulatory Change*

OMB Directive 15, Standards for the Classification of Federal Data on Race and Ethnicity,[2] provides that self-identification is the preferred means for gaining information about an individual's race and ethnicity, when practicable, and notes that when these data points are collected through observation, they are likely to be very different than from the information obtained when respondents report about themselves, especially in populations with multiple racial heritages.

In a recent review of existing policy by the FNS Civil Rights Division and Child Nutrition Programs,[3] FNS updated its policy to eliminate visual

[1] *https://www.ecfr.gov/current/title-28/chapter-I/part-42/subpart-F/section-42.406*.

[2] 62 FR 58782 (October 30, 1997) (*https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf*).

[3] CACFP 11–2021, SFSP 07–2021- ''Collection of Race and Ethnicity Data by Visual Observation and Identification in the Child and Adult Care Food Program and Summer Food Service Program—Policy Rescission'' (*https://www.fns.usda.gov/cn/Race-and-Ethnicity-Data-Policy-Rescission*).

observation as data collection method for other FNS programs where ''visual observation'' was permitted per the regulatory language or policy guidance. The review referenced reports stating that program participants do not want to have their race or ethnicity determined for them. Moreover, FNS concluded in this policy update that a third party's observation of an individual's appearance is not a reliable means to capture how a participant self-identifies their own racial or ethnic identity. This conclusion is supported by a recent Center for Medicaid Studies (CMS) study that assessed the quality of race and ethnicity information in observational health databases. The study suggested that patient self-reporting may provide better quality data than visual observation.[4]

A review of SNAP policy led to the conclusion that the use of visual observation for racial and ethnicity identification is unreliable data as it requires that State eligibility workers assume or guess the race or ethnicity of households. Therefore, FNS has determined that SNAP State agencies are no longer permitted to collect racial and ethnic data on households through visual observation. State agencies must continue to use alternative means to collect this information when not provided voluntarily on the SNAP application.

Accordingly, through this rule FNS proposes revising paragraph (g) at 7 CFR 272.6 to remove the phrase, ''such as by observation during the interview,'' as a way for SNAP State agencies to collect racial and ethnic data from households that do not voluntarily provide it in their application. FNS believes this change will better align SNAP regulations with current Federal policy (including Title VI of the Civil Rights Act of 1964) by improving the quality of collected data. This proposed rule will increase the accuracy of data collected on the race and ethnicity of SNAP households by reducing errors in data collection caused by inaccurate visual observation. Eliminating the use of visual observation would still provide FNS the information needed to meet the Federal requirement to collect this data. This underreporting may be mitigated through the use of other data sources or statistical tools to account for the times when participants choose not to self-identify.

FNS acknowledges the potential challenges this regulatory change may place on States' administrative processes for collecting demographic data. States should continue to explain the importance of this data to participants as they encourage them to self-identify and self-report.

States must still develop an alternative means of collecting the data, besides visual observation, when participants do not voluntarily provide the information. In developing these alternative collection methods, FNS encourages States to consider obtaining the data from other reliable sources where the respondent has self-identified race or ethnicity, such as applications for other assistance programs operated by the State agency (*e.g.,* employment, health, or social services). During the public comment period on this rule, FNS encourages States to submit comments on best practices for developing alternative methods for collecting race and ethnicity data when the information is not voluntarily provided on the application form. FNS plans to provide guidance to States on this issue.

## Procedural Matters

### Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be not significant after it was reviewed by OMB in conformance with Executive Order 12866.

### Regulatory Impact Analysis

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

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule would not have a significant impact on a substantial number of small entities. This proposed rule would not have an impact on small entities because the changes required by the regulations are directed toward State agencies operating SNAP.

### Congressional Review Act

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

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the **Federal Register** notice, published June 24, 1983 (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

### Federalism Summary Impact Statement

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

The Department has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs

[4] *https://www.cms.gov/about-cms/agency-information/omh/downloads/data-collection-resources.pdf.*

on State and local governments. Therefore, under Section 6(b) of the Executive order, a federalism summary impact statement is not required.

**Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

**Civil Rights Impact Analysis**

FNS has reviewed the proposed rule, in accordance with Department Regulation 4300–004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. The changes to SNAP regulations in this proposed rule are to remove third party visual observation for race and ethnicity data collection from SNAP regulations. After careful review of the rule's intent and provisions, FNS believes that the promulgation of this rule will increase the accuracy of data collected on the race and ethnicity of SNAP households by reducing errors in data collection caused by inaccurate visual observation. While this rule does provide for the collection of racial and ethnic data of SNAP households, as required by Federal law, it does not change any eligibility criteria.

**Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. We are unaware of any current Tribal laws that could be in conflict with this rule.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires OMB approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number under the Paperwork Reduction Act of 1995.

Information collection activities associated with this rule are approved under existing OMB Control Numbers. OMB Control Number 0584–0064 (expiration 02/29/2024) includes burden estimates associated with the collection of race and ethnicity data on SNAP applications. OMB Control Number 0584–0594 (expiration 07/31/2023) includes burden estimates associated with race and ethnicity data reporting on the form FNS–101, ''Participation in Food Programs—byRace''. The proposed changes in this rule do not introduce any new or changed information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

**E-Government Act Compliance**

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 7 CFR Part 272**

Civil rights, Claims, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

Accordingly, 7 CFR part 272 is amended as follows:

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 1. The authority citation for part 272 continues to read as follows.

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 272.6, revise the third sentence in paragraph (g) to read as follows:

**§ 272.6 Nondiscrimination compliance.**

* * * * *

(g) * * * The State agency must develop alternative means of collecting the ethnic and racial data on households when the information is not provided voluntarily by the household on the application form.

* * * * *

**Cynthia Long,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2022–13058 Filed 6–24–22; 8:45 am]

**BILLING CODE 3410–30–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30 and 32

**[NRC–2015–0017]**

**RIN 3150–AJ54**

### Items Containing Byproduct Material Incidental to Production

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule and draft guidance; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by adding a new class exemption from licensing and associated distribution requirements. This new class exemption would create a path for licensing current and future products that contain byproduct material incidental to their production. This rulemaking would resolve a petition for rulemaking submitted by GE Osmonics, Inc., that requested changes to the regulations to allow distribution of polycarbonate track etched membranes. The NRC plans to hold a public meeting to promote full understanding of the proposed rule and facilitate public comments.

**DATES:** Submit comments by September 12, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); 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–2015–0017. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

• *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications 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:** Shirley Xu, telephone: 301–415–7640; email: *Shirley.Xu@nrc.gov;* and Caylee Kenny, telephone: 301–415–7150; email: *Caylee.Kenny@nrc.gov.* Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

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## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2015–0017 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–2015–0017.

• *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. (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–2015–0017 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. Background

### *A. Petition for Rulemaking (PRM–30–65)*

On April 18, 2011, GE Osmonics, Inc., submitted a petition for rulemaking (PRM), PRM–30–65, that requested the NRC amend its regulations to allow commercial distribution of polycarbonate track etched (PCTE) membranes. The PCTE membranes are used in a variety of research, medical, pharmaceutical, academic, scientific, and industrial applications. The membranes are irradiated (exposed to radiation in, for example, a research and test reactor), to create uniform pore size and distribution, which leaves small amounts of mixed fission products in the membranes. The incidental radioactivity of these products presents a small fraction, less than a few hundredths, of the public dose limits in NRC regulations, as based on the product safety analyses submitted by the petitioner on March 20, 2012.

The NRC docketed the petition and, on June 22, 2011, the NRC published a notice of docketing and request for public comment (76 FR 36386). The NRC received one comment and, on September 14, 2012, the NRC published a document in the **Federal Register** (77 FR 56793) stating that the petitioner raised a valid regulatory issue about the commercial distribution of PCTE membranes and that the NRC would consider the issue in the rulemaking process.

### *B. Existing Regulatory Framework for Irradiated Products Containing Byproduct Material Incidental to Production*

Under part 30 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Rules of General Applicability to Domestic Licensing of Byproduct Material,'' the NRC regulates the manufacturing, production, transfer, receipt, acquisition, ownership, possession, and use of byproduct material. Typically, the NRC regulates these processes through a specific or general license. The regulations in § 30.11, ''Specific exemptions,'' through § 30.22, ''Certain industrial devices,'' provide exemptions from certain licensing requirements. Under 10 CFR part 32, ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material,'' the NRC regulates the manufacture and initial transfer of items containing byproduct material for sale or distribution. The regulations in § 32.11, ''Introduction of byproduct material in exempt concentrations into products or materials, and transfer of ownership or possession: Requirements for license,'' provide the requirements for obtaining a specific license authorizing the introduction of byproduct material into a product or material that will eventually be transferred to a person exempt from the licensing requirements.

Both §§ 32.11 and 30.14 provide that, for exempt distribution, the concentrations of byproduct material in a product cannot exceed the values listed in Schedule A in § 30.70. However, these regulations are not applicable to this class of products because the current regulations do not apply to items that contain byproduct material incidental to production; therefore, these items cannot be licensed for exempt transfers. For the specific case of irradiated gemstones, in the staff requirements memorandum for SECY–87–186A, the Commission approved the interim licensing of irradiated gemstones pursuant to § 32.11 with an exemption from requirements that prohibit application of products to a human being. Although this regulatory approach has been applied to irradiated gemstones, the existing regulatory framework is not designed to regulate the broader class of items containing byproduct material incidental to production for several reasons.

First, the concentrations in Schedule A pertain to volumetric concentrations in an item containing byproduct material. While volumetric concentrations are useful and appropriate for assessing some products, the NRC is aware of certain products (*e.g.,* polycarbonate membranes, which are thin films) for which volumetric concentrations would not be meaningful due to the products' shape. Consequently, the basis for using volumetric concentrations for products covered by Schedule A would not be applicable to several items that are in this class of products.

Second, the maximum concentration limits of Schedule A are based on the potential internal dose from inhalation or ingestion. Potential doses from the irradiated products under consideration, when used as intended, would likely result from external exposures, such as the wearing of a gemstone or the handling of a PCTE membrane. Therefore, using the Schedule A concentration limits would not be appropriate for this class of products.

Third, the list of radionuclides in Schedule A is not sufficiently comprehensive to cover all potential radionuclides present in this class of products. While some of the potential radionuclides in these products would fall within the catch-all provision of Schedule A (*i.e.,* beta- or gamma-emitting byproduct material with a half-life less than 3 years), Schedule A does not capture other radionuclides that are present in this class of products. For example, PCTE membranes are exposed to nuclear fission fragments, including strontium-90, which remain embedded in the membranes. Schedule A has never specifically included strontium-90 in the table, and strontium-90 would not fall within the catch-all provision of Schedule A because its half-life is more than 27 years. As a result, Schedule A would not cover several items in this class of products, such as PCTE membranes, because it does not capture, either specifically or in the catch-all provision, all radionuclides that may be present in these products.

These irradiated products are widely used in a variety of beneficial applications (*e.g.,* pharmaceutical, water filtration), and a regulatory structure provides certainty in a pathway to licensing for this class of products. As a result, revising the regulations is appropriate to allow the use of these products under the exemption and distribution provisions in 10 CFR parts 30 and 32.

*C. Recent Rulemaking Actions*

A regulatory basis was published in the **Federal Register** on February 2, 2021 (86 FR 7819). The NRC did not receive any public comments on the regulatory basis to inform this proposed rulemaking.

## III. Discussion

*A. What action is the NRC taking?*

This proposed rule would amend 10 CFR parts 30 and 32 to (1) add a new class exemption from licensing requirements to 10 CFR part 30 and (2) add associated distribution requirements to 10 CFR part 32. These changes would apply dose criteria, rather than concentration, as the primary means of protecting health and safety. These proposed changes would fully address PRM–30–65, provide a regulatory framework for current (*i.e.,* gemstones) and future irradiated products, and allow this class of products to be licensed without product-specific exemptions, which would otherwise require additional rulemaking in the future. This new regulatory structure would require a licensee to meet dose-based criteria, which would reduce the regulatory costs for current gemstone licensees, who currently provide both concentration and dose-based criteria. Additionally, as described below, this proposed rule would make conforming changes to include the new §§ 32.33, ''Requirements for license of items containing byproduct material incidental to production and transfer of ownership or possession,'' and 32.34, ''Items containing byproduct material incidental to production safety criteria,'' under § 32.303, ''Criminal penalties.''

In addition to providing dose measurements, the current distributors of irradiated gemstones use a variety of measurements and statistical analysis methods to demonstrate that the concentration of byproduct material at the time of sale to consumers is unlikely to exceed the concentration limits in § 30.70 (and derived concentrations for those not specifically included). Under the new provisions, current gemstone licensees and applicants (initial distributor or transferrer) would demonstrate that their products are unlikely to result in doses exceeding the dose criteria in the new provisions.

The NRC would amend 10 CFR part 30 to add new § 30.23, ''Items containing byproduct material incidental to production,'' specific to products containing byproduct material that is not part of the intended end use of the product, but is instead present as a result of production. This new section would only apply to items produced in a way that unavoidably results in the incidental addition of byproduct material to the final product. The NRC would add companion paragraphs to 10 CFR part 32 that would provide the applicable licensing requirements for distribution. The new section, 10 CFR 30.23, would only apply to those products or materials that have an exempt distribution license under § 32.33.

In the past, the NRC has established class exemptions for categories of products or devices with similar characteristics, rather than establishing individual exemptions for each product. These exemptions appear in §§ 30.19, ''Self-luminous products containing tritium, krypton-85, or promethium-147''; 30.20, ''Gas and aerosol detectors containing byproduct material''; and 30.22, ''Certain industrial devices.'' This planned rulemaking approach is similar to that for §§ 30.19, 30.20, and 30.22 in that the regulatory structure would allow new products containing byproduct material incidental to production to be licensed without product-specific exemptions; each of which would otherwise require additional rulemaking. Public health and safety are ensured by evaluating each specific product against safety criteria contained in the regulations that apply to all products in the class.

The new provision would be similar in some respects to the class exemptions in the current regulations in that it would require applicants requesting authorization to distribute a product or material to demonstrate that the product or material meets certain safety criteria. The NRC specifies these safety criteria in §§ 32.23, ''Same [Self-luminous

products containing tritium, krypton-85 or promethium-147]: Safety criteria''; 32.27, ''Same [Gas and aerosol detectors containing byproduct material]: Safety criteria''; and 32.31, ''Certain industrial devices containing byproduct material: Safety criteria.'' These safety criteria would form the primary means of providing reasonable assurance of adequate protection of public health and safety. Applicants requesting authorization to manufacture, possess, or distribute items containing byproduct material incidental to production would be required to demonstrate compliance with the safety criteria. These criteria would cover normal use, handling, storage, marketing, distribution, installation, servicing, and disposal, as well as potential accidents and misuse.

During the development of the regulatory basis for this proposed rulemaking, the NRC considered the following specific issues for this proposed rule:

(1) The need for establishing standards for the exempt distribution of products that contain byproduct material that is incidental to production. These standards would include requiring applicants to provide information relating to the design, manufacture, prototype testing (if applicable), quality control procedures, labeling and marking, and conditions of handling, storage, use, and disposal of the products to demonstrate that the product would meet the following specific safety criteria:

(a) Dose limits to the general public and those occupationally exposed [1] to the product, including through transportation, distribution, use, and disposal; and

(b) Prototype testing (if applicable) to demonstrate the degree of binding or containment that is necessary under the most severe conditions likely to be encountered in normal use of the product.

(2) The need for establishing ongoing requirements for the exempt distribution of products approved for distribution under the new provision in the proposed rule:

(a) Labeling requirements for the product and for final product packaging,

(b) Quality control/quality assurance, and

(c) Recordkeeping and annual transfer reporting.

These new provisions in the proposed rule can be applied generically and would present an appropriate regulatory framework for irradiated products of this class. They would allow for new products and materials to be developed, evaluated, and licensed under a framework that would adequately protect health and safety without the need for additional rulemaking. The safety criteria would be robust enough to cover any potential future irradiated products. In the long term, these comprehensive proposed changes would be the most cost-effective solution to the NRC, licensees, and applicants because other irradiated products are expected to be brought to market in the future.

*B. What persons would this action affect?*

This proposed rule, if adopted, would apply to persons who submit an application for current and future products that contain byproduct material incidental to production. Examples include PCTE membranes, irradiated gemstones, and certain silicon materials used in the electronics industry.

*C. Why do the requirements need to be revised?*

As noted in the ''Background'' section of this document, the current 10 CFR parts 30 and 32 regulations do not cover items that contain byproduct material incidental to production; therefore, these items cannot be licensed for exempt transfers. As a result, revising the regulations is appropriate to allow the potential use of these products under the exemption and distribution provisions in 10 CFR parts 30 and 32.

## IV. Section-by-Section Analysis

The following paragraphs describe the specific changes proposed by this rulemaking.

*Section 30.23 Items Containing Byproduct Material Incidental to Production*

This proposed rule would add new § 30.23 to require applicants to demonstrate that the product or material for distribution would meet certain safety criteria.

*Section 32.33 Requirements For License of Items Containing Byproduct Material Incidental to Production and Transfer of Ownership or Possession*

This proposed rule would add new § 32.33 to provide the requirements to authorize the initial transfer of the products or materials for use.

*Section 32.34 Items Containing Byproduct Material Incidental to Production Safety Criteria*

This proposed rule would add new § 32.34 to provide the safety criteria for license applicants.

*Section 32.35 Conditions of Licenses Issued Under § 32.33: Quality Control, Labeling, and Reports of Transfer*

This proposed rule would add a new § 32.35 to require adequate control procedures, labeling, and recordkeeping.

*Section 32.303 Criminal Penalties*

This proposed rule would amend paragraph (b) to include new §§ 32.33 and 32.34 as conforming changes.

## V. Regulatory Flexibility Certification

The NRC has prepared a draft regulatory analysis of the impact of this proposed rule. This proposed rule would affect approximately 27 current and expected licensees that manufacture and/or distribute items containing byproduct material incidental to production, some of which may qualify as small business entities as defined by § 2.810, ''NRC size standards.'' On the basis of the draft regulatory analysis conducted for this action, the estimated averted cost of this proposed rule for affected licensees is $40,000 (calculated using a 7 percent discount rate). Based upon historical data, the NRC estimates that approximately 2 out of the 27 estimated licensees subject to this rulemaking may qualify as small business entities as defined by § 2.810. These two small business entities are anticipated to be gemstone licensees. It is expected that all businesses will incur the same savings resulting from the licensing process. These savings are a small percentage of the gross sales; therefore the NRC concludes that there would be no significant economic impact to small business entities. The NRC believes that the selected alternative reflected in this proposed rule is the least costly, most flexible alternative that would accomplish the NRC's regulatory objective.

The NRC is seeking public comment on the potential impact of this proposed rule on small entities. The NRC particularly desires comment from licensees who qualify as small businesses, specifically as to how this proposed regulation would affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on small entities, while still adequately protecting the

[1] Individuals occupationally exposed include PCTE membrane manufacturers, truck drivers, warehouse workers, and waste disposal workers. For class exemptions, the existing criteria for such groups are 5–20 millirem (mrem)/year (50–200 microsieverts (μSv)/year) except for disposal scenarios for which the criterion is 1 mrem/year (10 μSv/year), because the same individuals could be impacted by all of the products allowed to be disposed in landfills and municipal incinerators.

public health and safety and common defense and security. Comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss:

(1) The size of the business and how the proposed regulation would result in a significant economic cost as compared to a larger organization in the same business community;

(2) How the proposed regulation could be further modified to take into account the business's differing needs or capabilities;

(3) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter;

(4) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations as opposed to providing special advantages to any individuals or groups; and

(5) How the proposed regulation, as modified, would still adequately protect the public health and safety and common defense and security.

Comments should be submitted as indicated under the ''Obtaining Information and Submitting Comments'' section of this document.

## VI. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available as indicated in the ''Availability of Documents'' section of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the ''Obtaining Information and Submitting Comments'' section of this document.

## VII. Backfitting and Issue Finality

The NRC has determined that the backfitting provisions in §§ 50.109, 70.76, 72.62, and 76.76, and the issue finality provisions in 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' do not apply to this proposed rule. The class of licensees subject to this rulemaking are applicants for a new exempt distribution license for items containing byproduct material incidental to production or current irradiated gemstone licensees that submit an application for a license amendment for a new irradiated gemstone exempt distribution license, the application for which is submitted after the effective date of this rule. This class of licensees would be regulated in accordance with 10 CFR parts 30 and 32. As 10 CFR parts 30 and 32 contain no backfitting provisions, and these licensees are not within the scope of an NRC regulation that contains a backfitting or issue finality provision, this proposed rule is not within the scope of the NRC's backfitting and issue finality provisions.

## VIII. Cumulative Effects of Regulation

The NRC is following its Cumulative Effects of Regulation (CER) process by engaging with external stakeholders throughout this proposed rule and related regulatory activities. Opportunity for public comment is provided to the public at this proposed rule stage. The NRC is issuing the draft guidance for comment along with this proposed rule to support more informed external stakeholder feedback. Further, the NRC may hold public meetings throughout the rulemaking process. Section XV, ''Availability of Guidance,'' of this document describes how the public can access the draft guidance for which the NRC seeks external stakeholder feedback. The NRC is requesting CER feedback on the following questions:

1. In light of any current or projected CER challenges, does the proposed rule's effective date provide sufficient time to implement the new proposed requirements, including changes to programs, procedures, and the facility?

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (*e.g.,* orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule's requirements?

4. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

5. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that supports the proposed rule.

## IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## X. National Environmental Policy Act

The NRC has determined that the proposed § 32.35(b) and (c) in this proposed rule are the types of actions described in § 51.22(c)(3)(ii) and (iii), and neither an environmental impact statement nor an environmental assessment has been prepared for the proposed amendments because they relate to recordkeeping and reporting requirements for initial distributors of items containing byproduct material incidental to production to exempt persons.

An environmental assessment has been prepared for proposed changes not covered by the categorical exclusions listed in § 51.22(c)(3)(ii) and (iii). The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The basis of this determination is as follows: The amendments would amend 10 CFR part 30 to add a new class exemption from licensing requirements for items containing byproduct material incidental to their production and to amend 10 CFR part 32 to add new sections for distribution requirements. The environmental impacts arising from the changes have been evaluated and would not involve any significant environmental impact or significant effect on the quality of the human environment. The environmental assessment is available as indicated in the ''Availability of Documents'' section of this document. Comments on the environmental assessment may be submitted to the NRC as indicated under the ''Obtaining Information and Submitting Comments'' section of this document. The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and has requested comments.

## XI. Paperwork Reduction Act

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collections.

*Type of submission, new or revision:* New.

*The title of the information collection:* Part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material.

Part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

*How often the collection is required or requested:* Every 15 years.

*Who will be required or asked to respond:* Applicant applying for an initial or renewed distribution and possession license for items containing byproduct material incidental to production.

*An estimate of the number of annual responses:*

*Part 30:* 18 (9 reporting + 9 recordkeepers).

*Part 32:* 918 (9 reporting + 9 recordkeepers + 900 third-party disclosure).

*The estimated number of annual respondents:*

*Part 30:* 9.

*Part 32:* 9.

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:*

*Part 30:* 585 (540 reporting hours + 45 recordkeeping hours).

*Part 32:* 714 (630 reporting hours + 9 recordkeeping hours + 75 third-party disclosure hours).

*Abstract:* In part 30 of title 10 of the *Code of Federal Regulations* (10 CFR) the NRC regulates the manufacturing, production, transfer, receipt, acquisition, ownership, possession, and use of byproduct material. Part 32 of 10 CFR provides requirements for the issuance of specific licenses to persons who manufacture or initially transfer items containing byproduct material for sale or distribution. This proposed rule would amend 10 CFR part 30 to add a new class exemption from licensing requirements for items containing byproduct material incidental to their production and amend 10 CFR part 32 to add new sections for distribution requirements.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection(s) contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of the burden of the proposed information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the Office of Management and Budget (OMB) clearance package and proposed rule is available in ADAMS or can be obtained free of charge by contacting the NRC's Public Document Room reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.resource@nrc.gov.* You may obtain information and comment submissions related to the OMB clearance package by searching on *https://www.regulations.gov* under Docket ID NRC–2015–0017.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the above issues, by the following methods:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2015–0017.
- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0017 and 3150–0001), ATTN: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

Submit comments by July 27, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

**XII. Criminal Penalties**

For the purposes of Section 223 of the Atomic Energy Act of 1954, as amended (AEA), the NRC is issuing this proposed rule that would amend 10 CFR parts 30 and 32 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of this rule would be subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR parts 30 and 32 are discussed in §§ 30.64 and 32.303, respectively.

**XIII. Coordination With Agreement States**

The working group involved in the preparation of this proposed rule included two representatives from the Organization of Agreement States. Early drafts of this proposed rule were provided to Agreement States for review. Comments from Agreement States were taken into consideration during the development of this proposed rule.

**XIV. Compatibility of Agreement State Regulations**

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC, or adequacy category Health and Safety (H&S). Compatibility Category A are those program elements that include basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B pertains to a limited number of program elements that cross jurisdictional boundaries and should be addressed to ensure uniformity of regulation on a nationwide basis. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C above, and thus, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended (AEA), or provisions of title 10 of the *Code of Federal Regulations.* These program elements should not be adopted by the Agreement States.

Category H&S program elements are not required for purposes of compatibility; however, they do have particular health and safety significance. The Agreement State should adopt the essential objectives of such program elements to maintain an adequate program.

The proposed rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The compatibility categories are designated in the following table:

COMPATIBILITY TABLE

| Section | Change | Subject | Compatibility | |
|---|---|---|---|---|
| | | | Existing | New |
| **Part 30** | | | | |
| 30.23 | New | Items containing byproduct material incidental to production | | B. |
| **Part 32** | | | | |
| 32.33 | New | Requirements for license of items containing byproduct material incidental to production and transfer of ownership or possession. | | NRC. |
| 32.34 | New | Items containing byproduct material incidental to production safety criteria | | NRC. |
| 32.35 | New | Conditions of licenses issued under § 32.33: Quality control, labeling, and reports of transfer. | | NRC. |
| 32.303 | Amend | Criminal penalties | D | D. |

## XV. Availability of Guidance

The NRC is issuing draft guidance in conjunction with this proposed rule. The draft guidance is intended for use by applicants, licensees, Agreement States, and the NRC when preparing and evaluating an exempt distribution licensing action for items containing byproduct material incidental to production. These exempt distribution licenses will authorize the initial distribution of byproduct material incidental to production to persons exempt from the regulatory requirements (exempt distribution) for an NRC license under 10 CFR part 30 and exempt from licensing requirements under the equivalent provisions in Agreement State regulations.

The draft guidance document reflects the provisions in this proposed rule. Comments on the draft guidance may be submitted by the methods provided in Section I, ''Obtaining Information and Submitting Comments,'' of this document. The draft guidance is available as indicated under the ''Availability of Documents'' section of this document. The NRC plans to incorporate the final guidance into the next comprehensive revision of NUREG–1556, Volume 8, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Exempt Distribution Licenses.''

## XVI. Public Meeting

The NRC will publish a notice of the location, time, and agenda of the meeting on *https://www.regulations.gov,* and on the NRC's public meeting website within at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

## XVII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| Document | ADAMS accession No./web link/**Federal Register** citation |
|---|---|
| Draft Guidance Document to NUREG–1556, Volume 8, Revision 1, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Exempt Distribution Licenses,'' dated June 2020. | ML21256A291. |
| **Federal Register** notification for the Regulatory Basis for this Proposed Rule, published February 2, 2021 | 86 FR 7819. |
| Regulatory Analysis | ML22160A404. |
| Environmental Assessment | ML22160A406. |
| **Federal Register** notification for PRM–30–65 Docket Closure [NRC–2011–0134], published September 14, 2012 | 77 FR 56793. |
| **Federal Register** notification for PRM–30–65 Receipt and Request for Comment [NRC–2011–0134], published June 22, 2011. | 76 FR 36386. |
| NRC Agreement State Program Policy Statement, published October 18, 2017 | 82 FR 48535. |
| Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 | 63 FR 31885. |
| GE Osomics—Polymer Track Etch Membrane 10 CFR 32.1—Manufacture and Distribution Product Safety Information, March 20, 2012. | ML120800277. |
| SECY–87–186A, ''Distribution of Radioactive Gems Irradiated in Reactors to Unlicensed Persons (Follow-up to SECY–87–186),'' October 5, 1987. | ML092400170. |
| Regulatory Basis for Items Containing Byproduct Material Incidental to Production | ML20339A312 (package). |
| OMB Clearance Package, June 2020 | ML21256A288. |

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2015–0017. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) navigate to the docket folder NRC–2015–0017; 2) click the ''Subscribe'' link; and 3) enter an email address and click on the ''Subscribe'' link.

**List of Subjects**

*10 CFR Part 30*

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear energy, Nuclear materials, Penalties, Radiation protection, Reporting and recordkeeping requirements, Whistleblowing.

*10 CFR Part 32*

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the AEA; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC proposes to amend 10 CFR parts 30 and 32 as follows:

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 30 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 81, 161, 181, 182, 183, 184, 186, 187, 223, 234, 274 (42 U.S.C. 2014, 2111, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

■ 2. Add § 30.23 to read as follows:

### § 30.23 Items containing byproduct material incidental to production.

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution items containing byproduct material that is incidental to production and except as provided in paragraphs (e) and (f) of this section, any person is exempt from the requirements for a license set forth in section 81 of the Act.

(b) For persons exempt under paragraph (a) of this section, they are also exempt from parts 20, 30 through 36, and 39 of this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires items containing byproduct material incidental to production.

(c) A specific license issued under 10 CFR 32.33, which authorizes the initial transfer of the products or materials for use under this section, is needed to manufacture, process, produce, or initially transfer items containing byproduct material incidental to production.

(d) This section may not be deemed to authorize the import of byproduct items containing byproduct material incidental to production.

(e) The exemption in this section does not apply to the transfer of byproduct material contained in any food, beverage, cosmetic, drug, or other commodity or product that is designed to be, or could reasonably be expected to be, ingested, inhaled, or absorbed by, or applied to, a human being.

(f) No person may introduce byproduct material incidental to production into a product or material knowing, or having reason to believe, that it will be transferred to persons exempt under this section or equivalent regulations of an Agreement State, except in accordance with a license issued under 10 CFR 32.33.

## PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 3. The authority citation for part 32 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 81, 161, 170H, 181, 182, 183, 223, 234, 274 (42 U.S.C. 2111, 2201, 2210h, 2231, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

■ 4. Add §§ 32.33, 32.34, and 32.35 to subpart B to read as follows:

### § 32.33 Requirements for license of items containing byproduct material incidental to production and transfer of ownership or possession.

(a) An application for a specific license to manufacture, process, or produce items containing byproduct material that is incidental to production, or to initially transfer for sale or distribution such items under 10 CFR 30.23 or equivalent regulations of an Agreement State, will be approved if:

(1) The applicant satisfies the general requirements specified in 10 CFR 30.33, provided that an application for a license to transfer items containing byproduct material that is incidental to production does not need to meet the requirements of 10 CFR 30.33(a)(2) and (3) for items manufactured, processed, or produced under a license issued by an Agreement State.

(2) The applicant submits sufficient information relating to the design; manufacture; prototype testing; quality control procedures; labeling or marking; and conditions of handling, storage, use, and disposal of the item containing byproduct material that is incidental to production to demonstrate that the product will meet the safety criteria set forth in § 32.34. The information must include:

(i) A description of the item and its intended use or uses.

(ii) The type and quantity of byproduct material in each unit.

(iii) Chemical and physical form of the byproduct material in the item and changes in chemical and physical form that may occur during the useful life of the product.

(iv) Solubility in water and body fluids of the forms of the byproduct material identified in paragraphs (a)(2)(iii) and (xii) of this section.

(v) Details of construction and design of the item as related to safety features under normal and severe conditions of handling, storage, use, and disposal of the item.

(vi) Maximum external radiation levels at 5 and 25 centimeters from any external surface of the product, averaged over an area not to exceed 10 square centimeters, and the method of measurement.

(vii) Degree of access of human beings to the item during normal handling and use.

(viii) Total quantity of byproduct material expected to be distributed in the items annually.

(ix) The expected useful life of the item.

(x) The proposed method of labeling or marking each point of sale package and, if feasible, each unit. Each mark or label must contain the statement ''CONTAINS RADIOACTIVE MATERIAL'' and must identify the initial transferor of the item.

(xi) Procedures for prototype testing of the item to demonstrate the effectiveness of the safety features under both normal and severe conditions of handling, storage, use, and disposal of the product.

(xii) Results of the prototype testing of the item, including any change in the form of the byproduct material contained in the product, the extent to which the byproduct material may be released to the environment, any increase in external radiation levels, and any other changes in safety features.

(xiii) The estimated external radiation doses and committed dose resulting from the intake of radioactive material in any one year relevant to the safety criteria in § 32.34 and the basis for such estimates.

(xiv) A determination that the probabilities with respect to the doses referred to in § 32.34 meet the criteria set forth in § 32.34.

(xv) Quality control procedures to be followed in the fabrication of production lots of the product and the quality control standards the product will be required to meet.

(xvi) Any additional information, including experimental studies and tests, requested by the Commission.

(3) The Commission determines that the product meets the safety criteria in § 32.34.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission may deny an application for a specific license under this section if the end uses of the product cannot be reasonably foreseen.

**§ 32.34 Items containing byproduct material incidental to production safety criteria.**

(a) An applicant for a license under § 32.33 must demonstrate that the item is designed and will be manufactured so that:

(1) In normal use, normal handling, and normal storage of the quantities of exempt items likely to accumulate in one location, including during marketing, distribution, installation, and/or servicing of the item, it is unlikely that:

(i) The external radiation dose in any one year, or the committed dose resulting from the intake of radioactive material in any one year, to a suitable sample of the group of individuals expected to be most highly exposed to radiation or radioactive material from the item will exceed 50 μSv (5 mrem); and

(ii) There will be a significant reduction in the effectiveness of the safety features of the item from wear and abuse.

(2) In disposal of quantities of exempt items likely to accumulate in the same disposal site, it is unlikely that the external radiation dose in any one year, or the committed dose resulting from the intake of radioactive material in any one year, to a suitable sample of the group of individuals expected to be most highly exposed to radiation or radioactive material, will exceed 10 μSv (1 mrem).

(3) In use, handling, storage, and disposal of the quantities of exempt products likely to accumulate in one location, including during marketing, distribution, installation, and/or servicing of the item, the probability is low that the safety features of the item would fail under such circumstances that a person would receive an external radiation dose or committed dose in excess of 5 mSv (500 mrem), and the probability is negligible that a person would receive an external radiation dose or committed dose of 100 mSv (10 rem) or greater.[1]

(b) An applicant for a license under § 32.33 must demonstrate that, even in unlikely scenarios of misuse, including those resulting in direct exposure to the item for 1,000 hours at an average distance of 1 meter and those resulting in dispersal and subsequent intake of $10^{-4}$ of the quantity of byproduct material (or in the case of tritium, an intake of 10 percent), a person will not receive an external radiation dose or committed dose in excess of 100 mSv (10 rem), and, if item is small enough to fit in a pocket, that the dose to localized areas of skin averaged over areas no larger than 1 square centimeter from carrying the item in a pocket for 80 hours will not exceed 2 Sv (200 rem).

**§ 32.35 Conditions of licenses issued under § 32.33: Quality control, labeling, and reports of transfer.**

Each person licensed under § 32.33 must:

(a) Carry out adequate control procedures in the manufacture of the item to assure that each item meets the quality control standards approved by the Commission;

(b) Label or mark each point of sale package and, if feasible, each unit. Each mark or label must contain the statement ''CONTAINS RADIOACTIVE MATERIAL'' and must identify the initial transferor of the item; and

(c) Maintain records of all transfers and file a report with the Director of the Office of Nuclear Material Safety and Safeguards by an appropriate method listed in 10 CFR 30.6(a), including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the items are transferred for use under 10 CFR 30.16 or equivalent regulations of an Agreement State.

(3) The report must include the following information on items transferred to other persons for use under 10 CFR 30.16 or equivalent regulations of an Agreement State:

(i) A description or identification of the type of each item and the model number(s); and

(ii) The number of units of each type of product transferred during the reporting period by model number.

(4)(i) The report, covering the preceding calendar year, must be filed on or before January 31 of each year. The licensee must separately include data for transfers in prior years not previously reported to the Commission.

(ii) Licensees who permanently discontinue activities authorized by the license issued under § 32.33 must file a report for the current calendar year within 30 calendar days after ceasing distribution.

(5) If no transfers of byproduct material have been made under § 32.33 during the reporting period, the report must so indicate.

(6) The licensee must maintain the record of a transfer for one year after the transfer is included in a report to the Commission.

**§ 32.303 [Amended]**

■ 5. In § 32.303, amend paragraph (b) by adding the references ''32.33, 32.34,'' in sequential order.

Dated June 21, 2022.

For the Nuclear Regulatory Commission.

**Brooke P. Clark,**

*Secretary of the Commission.*

[FR Doc. 2022–13599 Filed 6–24–22; 8:45 am]

**BILLING CODE 7590–01–P**

[1] Paragraph (a)(3) of this section assumes that as the magnitude of the potential dose increases above that permitted under normal conditions, the probability that any individual will receive such a dose must decrease. The probabilities have been expressed in general terms to emphasize the approximate nature of the estimates that are to be made. The following values may be used as guides in estimating compliance with the criteria: Low—not more than one such failure/incident per year for each 10,000 exempt units distributed. Negligible—not more than one such failure/incident per year for each one million exempt units distributed.

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 40

**[Docket No. RM22–10–000]**

## Transmission System Planning Performance Requirements for Extreme Weather

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission proposes to direct that the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization, submit to the Commission modifications to Reliability Standard TPL–001–5.1 (Transmission System Planning Performance Requirements) within one year of the effective date of a final rule in this proceeding to address reliability concerns pertaining to transmission system planning for extreme heat and cold weather events that impact the reliable operations of the Bulk-Power

System. Specifically, we propose to direct NERC to develop modifications to Reliability Standard TPL–001–5.1 to require: development of benchmark planning cases based on information such as major prior extreme heat and cold weather events or future meteorological projections; planning for extreme heat and cold events using steady state and transient stability analyses expanded to cover a range of extreme weather scenarios including the expected resource mix's availability during extreme weather conditions, and including the broad area impacts of extreme weather; and corrective action plans that include mitigation for any instances where performance requirements for extreme heat and cold events are not met.

**DATES:** Comments are due August 26, 2022.

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

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by U.S. Postal Service mail or by hand (including courier) delivery.

○ Mail via U.S. Postal Service only: Addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426.

○ For delivery via any other carrier (including courier): Deliver to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**
Mahmood Mirheydar (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8034, *mahmood.mirheydar@ferc.gov*
Milena Yordanova (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6194, *milena.yordanova@ferc.gov*

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

1. Pursuant to section 215(d)(5) of the Federal Power Act (FPA),[1] the Commission proposes to direct that the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submit modifications to Reliability Standard TPL–001–5.1 (Transmission System Planning Performance Requirements) [2] that address concerns pertaining to transmission system planning for extreme heat or cold weather events that impact the reliable operation [3] of the Bulk-Power System.[4]

[1] 16 U.S.C 824o(d)(5).

[2] *Transmission Planning Reliability Standard TPL–001–5,* Order No. 867, 85 FR 8155 (Feb. 13, 2020), 170 FERC ¶ 61,030, at P 1 (2020) (approving the proposed Reliability Standard TPL–001–5 and associated implementation plan). *N. Am. Elec. Reliability Corp.,* Docket No. RD20–8–000 (June 10, 2020) (delegated order) (approving Reliability Standard TPL–001–5.1). This NOPR refers to Reliability Standard TPL–001–5.1 to reflect that the currently effective version 4 of the Reliability Standard will be soon replaced by version 5.1 and any modifications proposed in the NOPR will apply only to TPL–001–5.1.

[3] The FPA defines ''Reliable Operation'' as ''operating the elements of the Bulk-Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.'' 16 U.S.C. 824o(a)(4).

[4] The Bulk-Power System is defined in the FPA as ''facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.'' *Id.* 824o(a)(1).

2. We take this action to address planning challenges associated with extreme heat and cold weather events, particularly those that occur during periods when the Bulk-Power System must meet unexpectedly high demand.[5] Extreme heat and cold weather events are occurring with greater frequency, and are projected to occur with even greater frequency in the future.[6] As such, the impact of concurrent failures of Bulk-Power System generators and transmission equipment and the potential for cascading outages [7] that may be caused by extreme heat and cold events should be studied and corrective actions should be identified and implemented.

3. At the Commission's June 1–2, 2021 technical conference on Climate Change, Extreme Weather, and Electric System Reliability, there was consensus among panelists that planners cannot simply project historical weather patterns forward to effectively forecast the future, since climate change has made the use of historical weather observations no longer representative of future conditions.[8] For example, extreme heat in summer in regions like the Pacific northwest and extreme cold in winter in regions like Texas has increased demand for electricity at times when historically demand has been low and such events will likely continue to present challenges in the future.[9] Therefore, transmission planners and planning coordinators need to reflect these new realities into their planning processes.[10]

4. Since 2011, the country has experienced at least seven major extreme heat and cold weather events,[11] all of which put stress on the Bulk-Power System, and resulted in some degree of load shed, and in some cases nearly caused system collapse and uncontrolled blackouts, which were only avoided via the actions of system operators. Of these, the four most severe occurred in 2011, 2013, 2018, and 2021. The extreme weather conditions in the February 2011 Southwest Cold Weather Event resulted in the acumulative loss of approximately thirty thousand megawatts of generation resources, causing the Electric Reliability Council of Texas (ERCOT) to shed load to prevent widespread, uncontrolled blackouts throughout the entire ERCOT Interconnection. The September Midwest and Mid-Atlantic 2013 Heatwave Event lasted over three days and at its peak required a 5,791 MW reduction in load. The PJM Interconnection, L.L.C. (PJM) analysis during the event indicated a need for pre-contingency load shed to avoid post-contingency voltage collapse and a potential cascading outage.[12] During the January 2018 South Central Cold Weather Event in the Midwest, had the grid operator lost the single largest contingency of 1,163 MW, there could have been firm load shedding to maintain system stability. In February of 2021, the extensive cold in the South Central and Texas regions required a combined total of 23,418 MW of firm load shed to maintain Bulk-Power System reliability; it was the largest controlled load shedding event in U.S. history. During this 2021 Cold Weather Event, had frequency in Texas remained under its lowest point on February 15, 2021 for an additional five minutes, approximately 17,000 MW of additional generation would have tripped, potentially blacking out the entire ERCOT Interconnection. ERCOT shed firm load in order to maintain frequency to prevent a collapse of the system.[13]

5. Given the reliability risks associated with extreme heat and cold weather events, including the potential for widespread blackouts, we believe it would be appropriate for planning of the transmission system to account for extreme heat and cold weather events' potential impact over wide geographical areas, and to consider the changing resource mix and associated planning assumptions. Reliability Standard TPL–001–4, the currently effective transmission system planning standard, was developed to establish transmission system planning performance requirements that ensure that the Bulk-Power System operates reliably over a broad spectrum of system conditions and following a wide range of probable contingencies. Reliability Standard TPL–001–4, and its successor, TPL–001–5.1, includes provisions for transmission planners and planning coordinators to study system performance under extreme events based on their experience. However, the current standards do not specifically require that a performance analysis be conducted for extreme heat and cold weather, despite the fact that such events have demonstrated a potential harm to reliable operations of the Bulk-Power System, thus leaving a gap in system planning.

6. To address this reliability gap, we propose to direct NERC to develop modifications to Reliability Standard TPL–001–5.1 to require: (1) development of benchmark planning cases based on information such as major prior extreme heat and cold weather events or future meteorological projections; (2) planning for extreme heat and cold events using steady state and transient stability analyses expanded to cover a range of extreme weather scenarios including the expected resource mix's availability during extreme heat and cold weather conditions, and including the broad area impacts of extreme heat and cold

[5] Technical Conference June 1–2, 2021, *Climate Change, Extreme Weather, and Electric System Reliability,* Docket No. AD21–13–000 (June 1–2, 2021), June 1, 2021 Tr. 26: 3–7 (Derek Stenclik, Founding Partner, Telos Energy, Inc.), 31:7–8 (Judy Chang, Undersecretary of Energy, Massachusetts).

[6] Environmental Protection Agency, *Climate Change Indicators: Weather and Climate* (May 12, 2021) (EPA Climate Change Indicators), *https://www.epa.gov/climate-indicators/weather-climate* (showing an upward trend in extreme heat and cold weather events).

[7] NERC Glossary of Terms Used in Reliability Standards (Updated March 29, 2022) (NERC Glossary). NERC defines ''cascading'' as, ''The uncontrolled successive loss of System Elements triggered by an incident at any location. Cascading results in widespread electric service interruption that cannot be restrained from sequentially spreading beyond an area predetermined by studies.''

[8] June 1, 2021 Tr. 30:2–3 (Chang), 31:12–18 (Lisa Barton, Executive Vice President/Chief Operating Officer, American Electric Power).

[9] June 1, 2021 Tr. 31:1–6 (Chang); June 2, 2021 Tr. 72:8–10 (Amanda Frazier, Senior Vice President of Regulatory Policy, Vista Corp.); 9:1–5 (Wesley Yeomans, Vice President of Operations, New York Independent System Operator, Inc. (NYISO)) (noting that in New York the majority of the extreme conditions were cold weather related but that there can be heat waves in New York City, and more heat waves are expected).

[10] June 1, 2021 Tr. 35:1–6 (Chang). *See also* US News, *Blackouts in US Northwest Due to Heat Wave, Deaths Reported* (June 29, 2021), *https://www.usnews.com/news/business/articles/2021-06-29/rolling-blackouts-for-parts-of-us-northwest-amid-heat-wave*; Judah Cohen et al., *Linking Arctic Variability and Change With Extreme Winter Weather in the United States,* 373 Sci. 1116, 1120 (2021), *https://www.science.org/doi/10.1126/science.abi9167* (a study connecting the 2021 extreme cold weather event in Texas and the South-central United States to global warming-induced weather anomalies that are likely to continue to produce severe winter storm events).

[11] This NOPR references the following seven extreme heat and cold weather events experienced since 2011: (1) February 2011 Southwest Cold Weather Event; (2) September Midwest and Mid-Atlantic 2013 Heatwave Event; (3) January 2014 Polar Vortex Cold Weather Event; (4) January 2018 South Central Cold Weather Event; (5) August 2020 California Heatwave Event; (6) 2021 Cold Weather Event; (7) June 2021 the Pacific Northwest Heatwave Event. The naming of the events is based on the title of the associated reliability report for each event cited below.

[12] PJM, *Technical Analysis of Operational Events and Market Impacts during the September 2013 Heat Wave,* at 13 (Dec. 23, 2013), *https://www.yumpu.com/en/document/read/40807126/20131223-technical-analysis-of-operational-events-and-market-impacts-during-the-september-2013-heat-wave.*

[13] FERC, NERC, Regional Entity Staff Report, *The February 2021 Cold Weather Outages in Texas, and the South-Central United States,* at 133 (Nov. 2021) (2021 Cold Weather Event Report).

weather; and (3) corrective action plans that include mitigation for any instances where performance requirements for extreme heat and cold events are not met. In proposing to direct NERC to modify Reliability Standard TPL–001–5.1, we are not proposing specific requirements. Instead, we identify concerns that we believe should be addressed. NERC may propose to develop new or modified Reliability Standards that address our concerns in an equally efficient and effective manner. However, NERC's proposal should explain how it addresses the Commission's concerns.[14]

7. We further propose to direct NERC to submit modifications to Reliability Standard TPL–001–5.1 within one year of the effective date of a final rule in this proceeding with compliance obligations for all proposed new or modified Reliability Standards beginning no later than 12 months from the date of Commission approval of the modified Reliability Standard. Finally, we invite comments on whether to also direct NERC to address in Reliability Standard TPL–001–5.1 other extreme weather-related events.

## II. Background

### *A. Legal Authority*

8. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[15] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[16] and subsequently certified NERC.[17]

9. Pursuant to section 215(d)(5) of the FPA, the Commission has the authority, upon its own motion or upon complaint, to order the ERO to submit to the Commission a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out section 215 of the FPA.[18] Further, pursuant to § 39.5(g) of the Commission's regulations, the Commission may order a deadline by which the ERO must submit a proposed or modified Reliability Standard, when ordering the ERO to submit to the Commission a proposed Reliability Standard that addresses a specific matter.[19]

### *B. Climate Change, Extreme Weather, and Electric System Reliability Technical Conference*

10. On March 5, 2021, the Commission announced that staff would hold a technical conference to discuss issues surrounding the threat to electric system reliability posed by climate change and extreme weather events.[20] The Commission sought to understand, among other things, whether further action from the Commission is needed to help achieve an electric system that can withstand, respond to, and recover from extreme weather events.[21] On March 15, 2021, the Commission invited comments on a range of issues related to Bulk-Power System reliability, including how extreme weather events (*e.g.,* hurricanes, extreme heat, extreme cold, drought, storms), have impacted the electric system and whether these events would require changes to the way generation, transmission, substation, or other facilities are designed, built, sited, and operated.[22] The Commission also inquired whether there are opportunities to improve the NERC Reliability Standards to address vulnerabilities to Bulk-Power System reliability due to climate change or extreme weather events in the areas of transmission planning, Bulk-Power System operations, Bulk-Power System maintenance, and emergency operations.[23]

11. On June 1 and 2, 2021, the Commission convened a staff-led technical conference on Climate Change, Extreme Weather, and Electric System Reliability focused on: (1) ways in which planning practices might evolve to achieve outcomes that reflect consumer needs for reliable electricity in the face of patterns of climate change and extreme weather events that diverge from historical trends; (2) best practices throughout the industry for assessing the risks posed by climate change and extreme weather and developing cost-effective mitigation; (3) ways in which existing operating practices may necessitate updated techniques and approaches in light of increasing instances of extreme weather and longer-term threats posed by climate change; (4) best practices for the recovery period following an extreme weather event; and (5) the role that coordination and cooperation across jurisdictions could play in planning, operations, and recovery practices to address climate change and extreme weather events.[24]

12. Following the conference, the Commission invited comments on specific topics discussed at the conference, such as the possibility of: incorporating probabilistic methods into local transmission planning and/or regional transmission planning; coordinating transfers across the seams between Regional Transmission Organizations; the possibility of modifying transmission planning requirements established under Reliability Standard TPL–001 to better assess and mitigate the risk of extreme weather events and associated common mode failures; additional changes to the NERC Reliability Standards to address the risk of extreme weather events; and among other topics, whether target levels of interregional transfer capacity could help facilitate more effective development of interregional transmission projects to help ensure reliability and resilience during extreme weather events.[25]

### *C. Overview of Technical Conference Comments*

13. Commenters submitted more than 50 sets of pre-conference and 20 post-conference comments on a wide range of issues, including the types of extreme weather events experienced,[26] and the range of mitigating measures that could be taken to address the specific risks of climate change in various regions of the country. Commenters expressed

[14] *See e.g., Mandatory Reliability Standards for the Bulk-Power Sys.,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), 118 FERC ¶ 61,218, at PP 186, 297, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007) (''where the Final Rule identifies a concern and offers a specific approach to address the concern, we will consider an equivalent alternative approach provided that the ERO demonstrates that the alternative will address the Commission's underlying concern or goal as efficiently and effectively as the Commission's proposal''); *Reliability Standards for Physical Sec. Measures,* 146 FERC ¶ 61,166, at P 13 (2014).

[15] 16 U.S.C. 824o(e).

[16] *Rules Concerning Certification of the Elec. Reliability Org. & Procedures for the Establishment, Approval, & Enf't. of Elec. Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), 114 FERC ¶ 61,328 (2006).

[17] *N. Am. Elec. Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[18] 16 U.S.C. 824o(d)(5).

[19] 18 CFR 39.5(g) (2021).

[20] *Climate Change, Extreme Weather, and Electric System Reliability,* Notice of Technical Conference, Docket No. AD21–13–000, at 1 (Mar. 5, 2021).

[21] *Id.* at 2.

[22] Supplemental Notice of Technical Conference, Docket No. AD21–13–000, at 1, 3 (Mar. 15, 2021).

[23] *Id.* at 5.

[24] Supplemental Notice of Technical Conference, Docket No. AD21–13–000, at 1, 3 (May 27, 2021) (attaching agenda).

[25] Notice Inviting Post-Technical Conference Comments, Docket No. AD21–13–000, at 3, 5 (Aug. 11, 2021).

[26] *See, e.g.,* California Independent System Operator Corporation (CAISO) Pre-Conference Comments at 3.

concerns that the impacts of climate change are anticipated to affect the electric system in multiple, compounding, and synergistic ways.[27] Generally, industry experts agreed that extreme weather events are likely to become more severe and frequent in the future,[28] and acknowledged the challenges associated with planning for extreme events, including shifting scheduled maintenance, canceling or recalling transmission and generation assets from scheduled maintenance to meet demand under unexpected circumstances.[29]

14. Some commenters discussed potential changes to the NERC Reliability Standards to address planning and operational preparedness for energy adequacy risks,[30] contingencies related to extreme weather events, and wide-area transmission planning and development challenges,[31] among others. In addition, participants advocated for planning that reflects the new climate-change driven conditions, as the expected impacts of climate change ''need to be baked into the rest of your planning and development activities.'' [32]

15. Pacific Gas and Electric Company states that Reliability Standard TPL–001–4 already requires transmission planners to evaluate extreme events, but could benefit from providing further clarity on the events to consider, as well as the extent to which investments can be made to the grid to mitigate the identified issues for the given event evaluated.[33]

16. Post-conference comments also addressed more directly the potential reliability gaps in the existing set of Reliability Standards, including Reliability Standard TPL–001–4. For example, MISO argues that while current Commission-approved Reliability Standards provide for the assessment of the impacts of extreme events that may include climate-driven weather events, they do not include requirements to mitigate consequences from such events.[34] Similarly, PJM states that Reliability Standard TPL–001–4 should be modified to specifically account for extreme weather events by mandating regional extreme weather design standards for transmission and generation operating criteria.[35] CAISO also states that Reliability Standard TPL–001 may not serve as the best means to assess the threat and risk of extreme weather events.[36]

17. NERC agrees that with proper planning, including consideration not only of historic temperature averages but also consideration of conditions during extreme weather events and the linkage between critical infrastructures, the risks associated with extreme weather and the changing resource mix can be mitigated.[37] NERC agrees that enhancements to the Reliability Standards could be beneficial. Some examples of potential enhancements include requiring reliability coordinators, balancing authorities, or planning coordinators to determine the temperature to which plants in their respective areas must weatherize; requiring reliability coordinators or balancing authorities to develop seasonal emergency energy management plans, to address conditions such as wildfires, extreme hot and cold temperatures, and severe storms (*i.e.,* hurricanes); requiring reliability coordinators to develop a rolling three week emergency energy management plan; and requiring balancing authorities to prepare a seasonal energy management plan based on regional extreme weather scenarios identified in NERC's seasonal assessments.[38]

### *D. Cold Weather Reliability Standards*

18. NERC and the Commission have begun to address the effects of extreme cold weather on generating units, specifically focusing on improved performance of generating units during cold weather conditions. On August 24, 2021, the Commission approved revised Reliability Standards to address some of the reliability risks posed by extreme cold weather.[39] Effective April 2023, those Reliability Standards will, *inter alia,* require generators to implement plans for cold weather preparedness and require the balancing authority, transmission operator, and reliability coordinator to plan and operate the grid reliably during cold weather conditions by requiring the exchange of certain information related to the generator's capability to operate under such conditions.[40]

19. The proposed improvements to transmission planning discussed in this NOPR and the requirements in the Cold Weather Reliability Standards both work together to mitigate the reliability impact of extreme weather events, such as the 2021 Cold Weather Event in Texas and South-Central United States. To ensure reliability, transmission planning should be considered in the context of generators' performance and availability during extreme heat and cold events.

### *E. Reliability Standard TPL–001–4 (Transmission System Planning Performance Requirements)*

20. Transmission system planning refers to the evaluation of future transmission system performance and creation of corrective action plans that includes mitigation for extreme heat and cold events to remedy identified deficiencies.[41] The planning horizon associated with transmission system planning covers near term (one to five years), long-term (six to 10 years), and beyond.[42]

21. Reliability Standard TPL–001–4, applicable to planning coordinators and transmission planners, establishes minimum transmission system planning performance requirements within the identified planning horizon to plan a Bulk-Power System that will operate reliably over a broad spectrum of system conditions and follow a wide range of probable contingencies.[43] Under Reliability Standard TPL–001–4, and Reliability Standard TPL–001–5.1, Requirement R2, each transmission planner and planning coordinator must prepare an annual planning assessment of its portion of the Bulk-Power System based on current or qualified past studies, document its assumptions, and document the summarized results of the

[27] Environmental Defense Fund and Columbia Law School's Sabin Center for Climate Change Law Pre-Conference Comments at 4.

[28] CAISO Pre-Conference Comments at 1–3; California Public Utilities Commission Pre-Conference Comments at 4; Oregon Public Utilities Commission Pre-Conference Comments at 2–3; NYISO Pre-Conference Comments at 4.

[29] June 2, 2021, Tr. at 21–23 (Wesley Yeomans, Vice President of Operations, NYISO).

[30] ISO-New England Inc. Pre-Conference Comments at 10.

[31] Midcontinent Independent System Operator (MISO) Pre-Conference Comments at 4–5, 14–17.

[32] June 1, 2021 Tr. 136:18–21 (Neil Millar, Vice President, Transmission Planning & Infrastructure Development, CAISO).

[33] Pacific Gas and Electric Company Pre-Conference Comments at 19–20.

[34] MISO Post-Conference Comments at 20.

[35] PJM Post-Conference Comments at 21.

[36] CAISO Post-Conference Comments at 10.

[37] NERC Pre-Conference Comments at 6.

[38] *Id.* at 15–16; NERC Post-Conference Comments at 5–7 (explaining that additional modifications to the Reliability Standards may be appropriate as the resource mix is transformed to one that is more sensitive to severe weather conditions, as some types of severe weather events or conditions could result in the loss of a substantial amount of resources due to fuel concerns).

[39] *N. Am. Elec. Reliability Corp.,* 176 FERC ¶ 61,119 (2021). The Commission approved proposed Reliability Standards EOP–011–2 (Emergency Preparedness and Operations); IRO–010–4 (Reliability Coordinator Data Specification and Collection); and TOP–003–5 (Operational Reliability Data) (collectively, the Cold Weather Reliability Standards).

[40] *Id.* P 3.

[41] NERC Glossary defines ''Planning Assessment'' as ''documented evaluation of future Transmission System performance and Corrective Action Plans to remedy identified deficiencies.''

[42] *Id.*

[43] Reliability Standard TPL–001–4, Purpose.

steady state analyses, short circuit analyses, and stability analyses.[44] This planning assessment is required for both near-term and long-term transmission planning horizons.[45]

22. Requirements R3 and R4 of Reliability Standard TPL–001–4 require in part that planning coordinators and transmission planners conduct steady state and stability analyses of pre-specified extreme events and evaluate possible actions designed to reduce the likelihood or mitigate the consequences and adverse impacts of the event(s), if the analysis concludes that the pre-selected extreme events cause cascading outages.

23. Table 1 of Reliability Standard TPL–001–4 includes a list of examples of planning events for which specific studies may be required, generally, based on the entity's own evaluation that such an event could occur within its operating area. Section 3.a of Table-1, Steady State & Stability Performance Extreme Events, states that steady state analysis should be conducted for wide-area events affecting the transmission system based on system configuration and how it can be affected by events such as wildfires and severe weather (*e.g.,* hurricanes and tornadoes). In addition, section 3.b serves as a catch-all provision, stating that steady state analysis should be performed for ''other events based upon operating experience that may result in wide-area disturbances.''

## III. The Need for Reform

### *A. Recent Events Show Changes in Weather Patterns Resulting in More Extreme Heat and Cold Weather Events*

24. Recent extreme weather-related events that spread across large portions of the country over the past decade demonstrate the challenges to transmission planning from extreme heat and cold weather patterns. Since 2011, the country has experienced at least seven major extreme heat and cold weather events; of these, four neared system collapse (2011, 2013, 2018, and 2021 extreme cold weather events) if the operators had not acted to shed load. The remaining three events (2014, 2020, 2021 extreme heat weather events) resulted in generation loss and varying degrees of load shedding.

25. These extreme heat and cold events demonstrate a risk to reliable operation of the Bulk-Power System. Below we discuss in detail how recent extreme cold and heat events have demonstrated such risks, including resource availability, limitations of the transmission system locally and over a wide area, and limitations of interregional transfer capabilities.

26. From February 1 to February 4, 2011, the southwest region of the United States experienced unusually cold and windy weather, referred to as the February 2011 Southwest Cold Weather Event. Low temperatures during the period were in the teens for five consecutive mornings and there were many sustained hours of below freezing temperatures throughout Texas and New Mexico. Low temperatures in Albuquerque, New Mexico ranged from 7 degrees Fahrenheit to minus seven degrees Fahrenheit over the period, compared to a normal range of 51 to 26 degrees Fahrenheit. Temperatures in Dallas, Texas ranged from 19 degrees to 14 degrees Fahrenheit, compared to a normal range of 60 to mid-to-upper 30s degrees Fahrenheit. Many cities in the region did not see temperatures above freezing until February 4, 2011. In addition, sustained high winds of over 20 mph produced severe wind chill factors. The extreme weather conditions resulted in the loss of a significant number of generators which occurred almost simultaneously, causing ERCOT to shed load to prevent widespread, uncontrolled blackouts throughout the entire ERCOT Interconnection.[46] As a result, approximately 4.4 million electric customers were affected over the course of the event.[47]

27. Two years later, the Midwest and mid-Atlantic experienced unseasonably hot weather from September 9 through September 11, 2013, which led to emergency conditions in the PJM service area. During this period, temperatures ranged from the upper 80s into the 90s Fahrenheit, which in some areas like Cleveland translated into conditions of over 20 degrees above normal.[48] As a result, demand for electricity reached an all-time high for September within PJM's footprint. Transmission owners tend to schedule maintenance outages during the fall and spring, increasing the risk of system stress during periods of weather-related high energy demand, such as occurred in September 2013. PJM implemented controlled outages in a few constrained areas to prevent uncontrolled blackouts over larger areas that could have affected many more customers.[49] In preparation for another day of unseasonably high use of electricity, on September 11, PJM called for voluntary demand response [50] across much of its service area, resulting in a 6,048 MW reduction in electricity demand, the largest amount of demand response PJM had ever received. During the entire event PJM shed 157 MW of load affecting approximately 45,000 customers.[51]

28. Another extreme event occurred the following year, in early January 2014, when the Midwest, south central, and east coast regions of the country experienced an extreme cold weather event known as the polar vortex, referred to as the January 2014 Polar Vortex Cold Weather Event, where extreme cold resulted in temperatures 20 to 30 degrees Fahrenheit below normal.[52] Some areas faced days that were 35 degrees Fahrenheit or more below their normal temperatures. These extreme temperatures resulted in record high electrical demand on January 6 and again on January 7, 2014. During the January 2014 Polar Vortex Cold Weather Event, the cold weather increased demand for natural gas, which caused a significant amount of gas-fired generation to become unavailable due to unavailability of the non-firm gas purchases they relied on. The cold weather and issues from fuel combined for over 35,000 MW of generator outages during the height of the polar vortex

[44] Reliability Standard TPL–001–4/5.1, Requirement 2. Further, steady-state analyses are a snapshot in time where load and system conditions (*e.g.,* generators, lines, facilities) are modeled as constant (not as changing over time). The analysis will either solve or diverge (not solved). *See* IEEE, *Transactions on Power Systems, Vol. 19, No. 2,* (May 2004) (power system stability is the ability of an electric power system, for a given initial operating condition, to regain a state of operating equilibrium after being subjected to a physical disturbance, with most system variables bounded so that practically the entire system remains intact); *see also,* Kundur, Prabha, *Power System Stability and Control,* McGraw Hill, at 26 (1994).

[45] *See* Reliability Standard TPL–001–4, Requirement 2.1 (Near-Term Transmission Planning Horizon) and Requirement R.2.2 (Long-Term Transmission Planning Horizon).

[46] FERC and NERC Staff Report, *Outages and Curtailments During the Southwest Cold Weather Event of February 1–5, 2011,* at 7 (Aug. 2011), *https://www.ferc.gov/sites/default/files/2020-05/ReportontheSouthwestColdWeatherEventfromFebruary2011Report.pdf.* Load shedding may be used to reduce an overload condition (such as when thermal limits on a transmission line are exceeded), to recover from an under-frequency condition, or to return voltage to a normal level.

[47] *Id.* at 1.

[48] PJM, *Technical Analysis of Operational Events and Market Impacts during the September 2013 Heat Wave,* at 7, Figure 1, RTO Temperatures (Dec. 23, 2013) (PJM Heat Wave Analysis), *https://www.yumpu.com/en/document/read/40807126/20131223-technical-analysis-of-operational-events-and-market-impacts-during-the-september-2013-heat-wave.*

[49] *Id.* at 4.

[50] Under demand response programs, retail customers volunteer and are paid to reduce their electricity use when requested.

[51] PJM Heat Wave Analysis at 5.

[52] NERC, *Polar Vortex Review* (Sept. 2014) (Polar Vortex Review), *https://www.nerc.com/pa/rrm/January%202014%20Polar%20Vortex%20Review/Polar_Vortex_Review_29_Sept_2014_Final.pdf.*

weather conditions.[53] By employing communication tools, interruptible load, demand-side management tools, and voltage reduction, balancing authorities and load serving entities were mostly able to maintain their operating reserve margins and serve firm load and only one balancing authority was required to shed 300 MW of firm load. Many outages, including a number of those in the southeastern United States, were the result of temperatures that fell below a plant's design basis.[54]

29. Further, in mid-January 2018, a large area of the south-central region of the United States saw unusually cold weather, with temperatures dropping from about five degrees Fahrenheit to as much as 27 degrees Fahrenheit below the normal daily minimums. Texas, Louisiana, Arkansas, Oklahoma, Mississippi, Missouri, and other neighboring states were all affected by the extreme cold weather, which lasted from January 12 to January 19, 2018, known as the January 2018 South Central Cold Weather Event.[55] The reliability coordinators in MISO did not anticipate the numerous mitigation measures they would need to take to maintain Bulk-Power System reliability at the peak of the event (January 17, 2018), including transmission loading relief, transmission reconfiguration, and the need to be prepared to shed firm load in the event of an additional contingency in MISO South of 1,163 MW.[56] Although the system remained stable on January 17, 2018, this event represented a near miss of cascading outages.

30. Two years later, the western United States suffered another intense and prolonged heatwave affecting many areas across the Western Interconnection during a five-day period from August 14 through August 19, 2020 (August 2020 California Heatwave Event). With temperatures between 15- and 30-degrees Fahrenheit above normal, many areas in the western parts of the country broke daily heat records. Some areas in the southwest posted record temperatures: Phoenix, Arizona reached a record 115 degrees Fahrenheit. Even cities located further north had similar temperature spikes, with Portland, Oregon, registering 102 degrees Fahrenheit. Because of these high temperatures, electricity demand in the Western Interconnection reached a record high on August 18, 2020.[57] On August 14 and 15, CAISO shed firm load to maintain the operating reserves needed to maintain the reliability and security of the Bulk-Power System. Several other entities reported being one contingency away from needing to shed load as well.[58]

31. More recently, in February 2021, Texas and the South-Central United States experienced the 2021 Cold Weather Event, the fourth cold-weather-related event in the last ten years to jeopardize Bulk-Power System reliability. Temperatures began to drop below freezing in Texas and the Southwest Power Pool, Inc. (SPP) region on February 8, 2021, but temperatures dropped even lower during the week of February 14, reaching their nadir on February 15 and 16, 2021. Daily low temperatures for February 15th were as much as 40 to 50 degrees lower than average daily minimum temperatures for that day. In addition to the arctic air, the cold front brought periods of freezing precipitation and snow to large parts of Texas and the South Central region, starting February 10, and extending into the week of February 14, 2021.[59]

32. This was the most devastating cold-weather-related event in the last 10 years to impact Bulk-Power System reliability, with a combined 23,418 MW of manual firm load shed, the largest controlled firm load shed event in U.S. history.[60] The unplanned generation outages that escalated during the event, 65,622 MW, were more than four times as large as the previous largest event, in 2011 (14,702 MW).[61] ERCOT faced the greatest challenge due to the magnitude of unplanned generating unit outages in its area, coupled with its limited ability to import power to help offset generation shortfalls. Notably, the entire ERCOT Interconnection has a maximum total import limitation of only 1,220 MW, which limited ERCOT's ability to import electricity to meet demand.[62] In Texas alone, this event resulted in more than 4.5 million people losing power, cost the Texas economy between $80 to $130 billion, and caused at least 210 deaths.[63] Had frequency in Texas remained under its lowest point for an additional five minutes during the peak of the event, approximately 17,000 MW of additional generation would have tripped, potentially blacking out the entire ERCOT Interconnection. In contrast to ERCOT, some regions, such as MISO and SPP, had the ability to import power from the east, where weather conditions were less severe, to make up for a large portion of their generation shortfalls during the event. For example, PJM was exporting an unprecedented amount of electricity into MISO and SPP, reaching over 15,700 MW of interregional transfers on February 15, 2021.[64]

33. Finally, in June 2021 the Pacific Northwest experienced another record-breaking heat wave, referred to as June 2021 the Pacific Northwest Heatwave. During the event, Seattle set an all-time record high temperature of 104 degrees Fahrenheit on June 27, 2021, while Portland had two back-to-back all-time records, on June 26 and 27, 2021, where temperatures reached 108- and 112-degrees Fahrenheit, respectively.[65] While such events are still rare in today's climate, researchers believe such events are likely to become more common in the future.[66]

34. While these wide-area extreme events may not occur every year, their frequency and magnitude are expected to increase. NOAA's data and analyses show an increasing trend in extreme heat and cold events,[67] and the U.S. Environmental Protection Agency climate change indicators also show upward trends in heatwave frequency, duration, and intensity.[68] NOAA states that climate change is also driving more compound events, which are multiple extreme events occurring simultaneously or successively, such as concurrent heat waves and droughts,

[53] *Id.* at 4.

[54] *Id.* at iii.

[55] FERC and NERC Staff Report, *The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018,* at 6–8 (July 2019) (2018 Cold Weather Event Report), *https://www.nerc.com/pa/rrm/ea/Documents/South_Central_Cold_Weather_Event_FERC-NERC-Report_20190718.pdf.*

[56] *Id.* at 12.

[57] Western Electricity Coordinating Council, *August 2020 Heatwave Event Analysis Report,* at 1–2 (Mar. 19, 2021) (2020 Heat Event Report), *https://www.wecc.org/Reliability/August%202020%20Heatwave%20Event%20Report.pdf.*

[58] *Id.* at 1.

[59] 2021 Cold Weather Event Report at 9, 12–13.

[60] *Id.* at 9.

[61] *Id.*

[62] *Id.* at 127 n.197.

[63] *Id.* at 10.

[64] PJM Post-Conference Comments at 17–18; 2021 Cold Weather Event Report at 229 n. 355. Interregional transfer capability allows an entity in one region with available energy to assist one or more entities in another region that is experiencing an energy shortfall due to the extreme weather event.

[65] Climate Signals, *Northwest Pacific Heat Wave June 2021* (Oct. 2021), *https://www.climatesignals.org/events/northwest-pacific-heat-wave-june-2021#/more.*

[66] Sjoukje Y. Philip, Sarah F. Kew et al., *Rapid attribution analysis of the extraordinary heatwave on the Pacific Coast of the US and Canada* (June 2021), at 19*9, https://www.worldweatherattribution.org/wp-content/uploads/NW-US-extreme-heat-2021-scientific-report-WWA.pdf.*

[67] NOAA website, *Climate Data Online* (NOAA website, Climate Data Online), *https://www.ncdc.noaa.gov/cdo-web/.*

[68] EPA Climate Change Indicators.

and more extreme heat conditions in cities.[69]

35. With respect to extreme cold, NOAA explains that accelerated arctic warming is likely contributing to the increasing frequency of Arctic polar vortex-stretching events that deliver extreme cold to the United States and Canada, including the winter 2021 Texas cold wave.[70] NOAA climate data indicates that the occurrence of significant cold weather events is trending higher nationwide.[71]

36. As discussed, the recent extreme heat and cold events have had a significant impact on the reliability of the Bulk-Power System. However, the potential impact of widespread extreme heat and cold events on the reliability of the Bulk-Power System can be modeled and studied in advance as part of near-term and long-term transmission system planning. Transmission planners could use the studies to develop transmission system operational strategies or corrective action plans with mitigation that could be deployed prior to and in preparation for extreme heat and cold events. Examples of such corrective action plans include planning for additional contingency reserves or implementing new energy efficiency programs to decrease load,[72] planning for additional interregional transfer capability, transmission switching/reconfiguration, or adjusting transmission and generation maintenance outages based on longer-lead forecasts. Therefore, given the urgency of addressing the negative impact of extreme weather on the reliability of the Bulk-Power System, the proposed directives to NERC in this NOPR aim to improve system planning specifically for extreme heat and cold weather events.

[69] NOAA website, Climate Data Online.

[70] NOAA, Climate Program Office, *Research Links Extreme Cold Weather in the United States to Arctic Warming, https://cpo.noaa.gov/Interagency-Programs/NIHHIS/ArtMID/6409/ArticleID/2369/Research-Links-Extreme-Cold-Weather-in-the-United-States-to-Arctic-Warming?msclkid=f9ad03bcc7c911ecba22ebf3e1ead5d9.*

[71] NOAA website, Climate Data Online.

[72] Contingency reserves would only contribute to a corrective action plan to the extent that they are expected to perform during the applicable modeled extreme weather event(s) and thereby contribute to meeting the applicable performance criteria. Accordingly, if for instance, extreme cold is anticipated to cause fuel unavailability for the applicable area, a corrective action plan would need to account for such limitations.

### *B. NERC Reliability Standards Do Not Require Planning To Minimize the Increasing Reliability Risks Associated With Anticipated Extreme Heat and Cold Weather Events*

37. The currently effective Reliability Standard TPL–001–4 and the to-be-effective TPL–001–5.1, Requirements R3 and R4 require steady state and stability analyses to be performed for extreme events ''listed in Table 1 that are expected to produce more severe system impacts.'' Table 1, Steady State & Stability Performance Extreme Events, under the Steady State analysis, sections 3.a.iii and 3.a.iv lists wildfires and severe weather (*e.g.,* hurricanes and tornadoes) as potential events that could be studied. However, neither Requirements R3 or R4, nor the associated Table 1 specifically require steady state analyses for extreme heat and cold conditions to be completed as part of the transmission planner's or planning coordinator's planning assessment. Finally, Table 1, provisions 2.f (stability) and 3.b (steady state), require the responsible entities to study events based on operating experience that may result in a wide-area disturbance, but they do not specify the study of extreme heat or cold conditions.

38. System planning measures alone will not eliminate the reliability risk associated with extreme heat and cold events. However, system planning will limit the impact of such events and reduce the risk to the reliability of the Bulk-Power System, which prior events demonstrate is significant.

39. The country experienced widespread cold weather events in 2011, 2014, 2018, and 2021. With the exception of the January 2018 South Central Cold Weather Event, planned and unplanned generating unit outages caused energy emergencies and triggered the need for firm load shed. As evidenced by the last cold weather event in 2021, where generation loss and loss of load were the most extreme, it becomes increasingly more important to consider changes in transmission planning. Although during the January 2018 South Central Cold Weather Event the system remained stable, the 2018 Cold Weather Event Report addressing this specific event recommended that MISO and other reliability coordinators perform voltage stability analyses when under similarly constrained conditions, benchmark planning and operations models against actual events that strained the system, perform periodic impact studies to identify which elements in the adjacent reliability coordinators' systems have the most impact on their own systems, and perform drills with entities involved in load shedding to prepare to execute load-shedding for maintaining reserves while at the same time alleviating severe transmission conditions.[73]

40. Having the necessary data and performing modeling in advance of extreme cold temperatures could allow transmission planners and operators to assess the potential impact of an event to identify corrective actions that could be taken well in advance of the event. Such action could include ensuring generators have winterized their equipment, scheduling fewer planned outages of generating units and transmission lines, and endeavoring to maintain transmission ties intact to: (1) permit maximum transfers to an area experiencing a deficiency in generation; (2) minimize the possibility of cascading outages; and (3) assist in restoring operation to normal.[74] While these corrective action plans may not fully mitigate the potential impact of these events, they could minimize the impact and reduce system restoration time.

41. Past experience can inform how steady state and stability analyses should model transmission and generator outages, including availability of wind, natural gas, and other resources sensitive to extreme cold conditions. For example, the February 2021 cold weather-related outages in Texas and the south-central United States caused 4,125 outages/derates of generating units (*i.e.,* approximately 456 GW during event in total event area). Of the total generation losses, 59% were gas-fired generating units due to fuel issues [75] and a pipeline equipment failure, and 27% were wind generation due to blade icing.[76]

42. While heat events have different planning challenges, they also present a serious risk to the Bulk-Power System and often require operators to shed load to maintain system stability. The recent extreme heat events resulted in a variety of reliability issues such as controlled rolling blackouts and transmission congestion. During the August 2020 California Heatwave Event, wind production was low during the evenings, and solar generation was declining during the peak demand hours, leading to reserve shortages.

[73] 2018 Cold Weather Event Report at 12–13.

[74] ERCOT, *Nodal Operating Guide,* at 137 (Jan. 1, 2022), *https://www.ercot.com/files/docs/2021/12/21/Nodal%20Operating%20Guide.pdf.*

[75] Fuel issues included 87% natural gas fuel supply issues (decreased natural gas production, terms and conditions of natural gas commodity and transportation contracts, low pipeline pressure and other issues) and 13% other fuel issues.

[76] 2021 Cold Weather Event Report at 163.

Similar to Texas, California relies on wind and solar generation to meet normal peak day demand, but wind and solar generation were largely unavailable. Steady state and stability analyses of study cases modeled to reflect past extreme conditions as well as modeling of availability of generation resources during extreme heat conditions in the planning process could have better prepared the transmission operators for such conditions.

43. Past extreme heat and cold events discussed above demonstrate the importance of assessing resource and reserve requirements under extreme heat and cold weather conditions. Developing and using extreme heat and cold weather scenarios in planning analyses will help to identify the potential risks that extreme events may pose to the Bulk-Power System. Based on the risks identified, appropriate mitigations or corrective action plans such as requiring additional reserves and transfer capability can be developed and deployed to address the risks and specify what should be planned for the longer term to ensure the availability of electricity in real time.

44. NERC recognizes that extreme events present a reliability risk and there are opportunities to improve the transmission planning processes. Following the 2021 extreme cold weather event, NERC issued a level 2 NERC Alert to industry on cold weather preparations for extreme weather events with five recommendations to assist reliability coordinators, balancing authorities, transmission operators, and generator owners in preparing for the winter season. NERC's level 2 Alerts recommend but do not mandate registered entities to take specific actions.[77] The Alert recommended seasonal operating plans for the upcoming winter season, which would include plans to utilize additional transmission capacity, consideration of the import capability of the system and resource availability constraints on external systems, and load forecasting practices that consider extreme events, among other recommendations.[78] The NERC Alert did not include any recommendations concerning long-term transmission planning.

45. In addition, in 2021 NERC formed the Energy Reliability Assessment Task Force (ERATF) to assess risks associated with unassured energy supplies, including the inconsistent output from variable renewable energy resources, fuel location, and volatility in forecasted load, which can result in insufficient amounts of energy on the system to serve electrical demand.[79] The ERATF uses resource adequacy models to address energy availability concerns related to the operations planning horizon (*i.e.,* one day to one year) and near-term planning horizon (*i.e.,* one to five years).[80] In December of 2021, the ERATF prepared a draft Standard Authorization Request (SAR) and based on the comments to the SAR, two SARs were created: a planning SAR and an operations/operations planning SAR, aiming to create or modify NERC Reliability Standards across the operations/operational planning time horizon and the planning time horizon. To discuss this latest update with industry members, NERC held an informational Webinar on May 19, 2022, and the two SARs were scheduled for committee consideration on June 8, 2022.[81]

46. While these ongoing efforts by NERC and industry members are intended to improve system reliability, they do not directly address the gap in transmission planning related to extreme heat and cold weather. NERC acknowledges that heat and cold events have effects on the grid but at this time has not determined that modifications to TPL–001–5.1 are needed to address extreme weather events.[82]

## IV. Proposed Directives

47. We preliminarily find that a reliability gap exists in Reliability Standard TPL–001–5.1 with respect to a lack of a long-term planning requirement for extreme heat and cold weather events. Accordingly, pursuant to section 215(d)(5) of the FPA, we propose to direct that NERC develop modifications to Reliability Standard TPL–001–5.1 to require: (1) development of benchmark planning cases based on information such as major prior extreme heat and cold weather events or future meteorological projections;[83] (2) planning for extreme heat and cold events using steady state and transient stability analyses expanded to consider a range of extreme heat and cold weather scenarios (*i.e.,* sensitivities to be applied to the benchmark base case(s)), including the expected resource mix's availability during extreme heat and cold weather conditions, and including the broad area impacts of extreme heat and cold weather; and (3) corrective action plans that include mitigation for any instances where performance requirements for extreme heat and cold events are not met. We further elaborate on the substance of these proposed directives below. In proposing to direct NERC to develop modifications to Reliability Standard TPL–001–5.1, we are not proposing specific requirements; we are identifying concerns that we believe should be addressed. NERC may propose to develop new or modified Reliability Standards that address these concerns in an equally efficient and effective manner as the requirements proposed in this paragraph; however, NERC must explain how its proposal addresses the Commission's concerns.[84]

48. We further propose to direct NERC to submit modifications to Reliability Standard TPL–001–5.1 within one year of the effective date of a final rule in this proceeding with compliance obligations for all proposed new or modified Reliability Standards beginning no later than 12 months from the date of Commission approval of the modified Reliability Standard. Finally, we invite comments on whether to also direct NERC to address in Reliability Standard TPL–001–5.1 other extreme weather-related events.

49. Below we provide additional context for these three proposed directives and describe reliability concerns and potential options for

[77] NERC, *About Alerts, https://www.nerc.com/pa/rrm/bpsa/Pages/About-Alerts.aspx.*

[78] NERC, *Alert R–2021–08–18–01 Extreme Cold Weather Events* (Aug. 18, 2021), *https://www.nerc.com/pa/rrm/bpsa/Alerts%20DL/NERC%20Alert%20R-2021-08-18-01%20Extreme%20Cold%20Weather%20Events.pdf.*

[79] NERC, *Energy Reliability Assessment Task Force website,* (ERAFT website), *https://www.nerc.com/comm/RSTC/Pages/ERATF.aspx#:~:text=%E2%80%8B%E2%80%8B%E2%80%8B%E2%80%8B%E2%80%8B,insufficient%20amounts%20of%20energy%20on.*

[80] NERC Post-Technical Conference Comments at 7.

[81] NERC, *Informational Webinar: Industry Webinar Energy Reliability Assessment Task Force Update on the Revised SARs* (May 19, 2022), *https://www.nerc.com/pa/RAPA/Lists/RAPA/DispForm.aspx?ID=480*; NERC, *Reliability and Security Technical Committee Meeting Agenda,* SAR Draft.

[82] NERC, *2021 ERO Reliability Risk Priorities Report,* Risk Profile 2, at 26 (July 2021), *https://www.nerc.com/comm/RISC/Documents/RISC%20ERO%20Priorities%20Report_Final_RISC_Approved_July_8_2021_Board_Submitted_Copy.pdf; see also* NERC Post-Conference Comments at 5 (referencing Reliability Standard TPL–001–4, NERC states that ''[w]ith respect to extreme weather more generally, NERC staff will continue to examine the Reliability Standards to determine if other modifications are needed.'').

[83] For instance, a benchmark event could be constructed based on data from a major prior extreme heat or cold event, with adjustments if necessary to account for the fact that future meteorological projections may estimate that similar events in the future are likely to be more extreme.

[84] Order No. 693, 118 FERC ¶ 61,218 at P 186; *Reliability Standards for Physical Sec. Measures,* 146 FERC ¶ 61,166 at P 13.

consideration that we believe would address these concerns.

*A. Develop Benchmark Planning Cases Based on Major Prior Extreme Heat and Cold Weather Events*

50. As part of its revisions to Reliability Standard TPL–001–5.1, we are proposing to direct that NERC develop requirements that address the types of extreme heat and cold scenarios the responsible entities are required to study. Reliability Standard TPL–001–5.1 does not require any specific approach to studying extreme heat and cold events and we are concerned that, without specific requirements describing the types of heat and cold scenarios that entities must study, the standard may not provide a significant improvement upon the status quo.

51. To accomplish this, the modified Reliability Standard developed by NERC should include benchmark events that responsible entities must study, as well as guidelines regarding which range of sensitivities must be applied to these benchmark event scenarios. Such benchmark events should be based on prior events (*e.g.,* February 2011 Southwest Cold Weather Event, January 2014 Polar Vortex Cold Weather Event) and/or constructed based on meteorological projections, as described above. In addition to providing valuable case study information to be applied to possible comparable future events, these events will also serve as a basis for effectively using assets and resources. Once developed, the results of the benchmark events studies could be applied to determine the limitations of the transmission system locally and over a wide-area, and to understand resource availability and potential firm load shedding requirements under stressed conditions.

52. While extreme weather risks may vary from region to region and change over time, it is important that transmission planners and planning coordinators likely to be impacted by the same types of extreme weather events use consistent benchmark events. In determining an appropriate benchmark event, NERC should consider approaches to provide a uniform framework while still recognizing regional differences. For example, NERC could define benchmark events around a projected frequency (*e.g.,* 1-in-50-year event) or probability distribution (95th percentile event),

53. We propose to provide NERC with flexibility in defining one or more appropriate benchmark events. For example, one approach could be for NERC to develop the common benchmark event or events through the standards development process and include the relevant parameters of the benchmark event or events in the modified reliability standard. Another approach could be to include in the modified standard the primary features of the benchmark event or events (*e.g.,* the expected occurrence such as one-in-50 years) while designating another set of entities, such as the Regional Entities, reliability coordinators, or even NERC itself, as responsible for periodically updating key aspects of the benchmark events based on the most up-to-date data. Such a method for developing benchmark events and scenarios could establish a common design basis across the industry while still recognizing regional differences in climate and weather patterns. We seek comment on whether, and to what extent, it may be appropriate to allow designated entities to periodically update key aspects of the benchmark events.

54. As discussed further below, establishing one or more benchmark events should form the basis for sensitivity analysis, which provide better visibility into the actual system conditions during extreme heat and cold. For example, sensitivity analysis could include analysis of simultaneously varying generation dispatch (*e.g.,* wind, solar, natural gas, and other fuel generation availability), system transfers, and load, which have been observed during prior extreme heat and cold events.

55. In addition to establishing requirements that address the extreme heat and cold scenarios that responsible entities are required to study, NERC could also establish measures of system performance (stability, voltage, thermal limits, etc.) to determine whether the responsible entities must implement a corrective action plan. Performance requirements are a corollary to study requirements—without clear performance requirements, the obligations on responsible entities to mitigate issues with system performance may be unclear. Moreover, performance requirements are an integral part of the existing Reliability Standard TPL–001–5.1.[85] Accordingly, NERC should incorporate performance requirements for extreme heat and cold conditions when modifying TPL–001–5.1.

56. In establishing any proposed performance requirements, NERC should seek to prevent system instability, uncontrolled separation, and cascading outages. While load shedding could still occur during extreme heat and cold events to prevent instability, uncontrolled separation, and cascading, it should be minimized as much as possible. Developing benchmark events and associated corrective actions to be deployed prior to and during the event, would result in better system performance in real time.

*B. Transmission System Planning for Extreme Heat and Cold Weather Events*

57. As discussed above, we propose to direct that NERC develop modifications to Reliability Standard TPL–001–5.1 to require planning for extreme heat and cold events using steady state and transient stability analyses expanded to consider a range of extreme heat and cold weather scenarios including the expected resource mix's availability during extreme heat and cold weather conditions, and including the broad area impacts of extreme heat and cold weather. In this section, we discuss six topics which NERC would be required to address in a modified Reliability Standard pursuant to the proposed directive: (1) steady state and transient stability analysis; (2) transmission planning studies of wide area issues; (3) concurrent generator and transmission outages; (4) sensitivity analysis; (5) consideration of modifications to the traditional planning approach; and (6) coordination among planning coordinators and transmission planners and sharing of results. We note that a range of methods/approaches could satisfy the Commission's directive with regard to issues (3) through (6). NERC would retain flexibility with regard to *how* to address these topics, so long as it incorporates them into its proposed solution. To better inform our directive to NERC in the final rule, we invite comments on these matters.

1. Steady State and Transient Stability Analyses

58. To maintain and improve the reliability of the Bulk-Power System, it is important to conduct both steady state and stability analyses for extreme heat and cold events as part of transmission planning studies. As discussed above, steady state and stability analyses of study cases modeled to reflect past and forecasted extreme heat and cold conditions would better prepare transmission operators for such conditions. Further, this approach is consistent with Reliability Standard TPL–001–5.1, which requires both steady state and stability analyses for extreme events identified in Table 1 of the Standard. Performing these studies in the long-term planning horizon time frame (*i.e.,* five to 10 years) will provide an adequate lead time for entities to

[85] *See* Reliability Standard TPL–001–5.1 (Transmission System Planning Performance Requirements), Requirements R1 through R8.

develop and implement corrective action plans to reduce the likelihood or mitigate the consequences and adverse impacts of such events.

59. A steady-state analysis or assessment is based on a snapshot in time where bulk-electric system facilities such as generators, transmission lines, transformers, etc. are modeled as fixed and load is modeled as a constant. The steady state analysis assesses the ability of the system to deliver electricity to load within the ratings and constraints of generators and transmission lines. It also includes a contingency analysis to predict electrical system conditions when elements are removed from the base case.[86]

60. Transient stability or dynamic studies add to the steady state analyses simulate the time-varying characteristics of the system during a disturbance that occurs during an extreme heat or cold weather event. They are time-domain analyses that assess angular stability, voltage stability, and frequency excursions.[87] Transient angular stability is the ability of interconnected synchronous machines of a power system to remain in synchronism after being subjected to a disturbance (*i.e.,* fault, sudden loss of load, and generation tripping).[88] Transient voltage stability refers to the ability of a power system to maintain steady voltages at all buses in the system after being subjected to a disturbance.[89]

61. While we recognize dynamic studies can be more resource intensive to perform, we believe that the consideration of both types of studies is important to understand the potential impacts of extreme heat and cold weather events. We believe the consideration of dynamic studies is particularly important given the changing resource mix and the need to understand the dynamic behavior of both traditional generators as well as variable energy resources (VER) (mainly wind and photovoltaic solar).

62. To that end, we seek comments on whether planning coordinators and transmission planners should include contingencies based on their planning area and perform both steady state and transient stability (dynamic) analyses using extreme heat and cold cases. We are inviting comments on the following topics regarding planning for extreme heat and cold weather conditions: (1) the set of contingencies planning coordinators and transmission planners must consider; (2) required analyses to ensure system stability, frequency excursion and angular deviations caused as a result of near simultaneous outages or common mode failures of VERs; and (3) the role of demand response under such scenarios.

63. Finally, we emphasize the continued importance of ensuring that entities responsible for performing assessments under TPL–001–5.1 are able to obtain the necessary data. Currently, the data for steady-state, dynamic, and short circuit modeling can be obtained pursuant to Reliability Standard MOD–32–1, Requirement 1 (Data for Power System Modeling and Analysis), which is referenced in Reliability Standard TPL–001–5.1. Specifically, Reliability Standard MOD–32–1 allows planning coordinators and transmission planners to request data from the generator owners and transmission owners, which are obligated to provide the specified data.[90] Consistent with the existing standards, we believe it is important for NERC to ensure that registered entities responsible for performing studies of extreme weather are able to access the data necessary to complete such studies. Accordingly, we seek comment on whether the existing Reliability Standards are sufficient to ensure that responsible entities performing studies of extreme heat and cold weather conditions have the necessary data, or whether the Commission should direct additional changes pursuant to FPA 215(d)(5) to address that issue.

2. Transmission Planning Studies of Wide-Area Events

64. As discussed above, our proposed directive would include modifications to TPL–001–5.1 to require transmission planning studies that consider the broad area impacts of extreme heat and cold weather. The effects of extreme weather events on the reliable operation of the Bulk-Power System can be widespread, potentially causing simultaneous loss of generation and increased transmission constraints within and across regions. The studies required by TPL–001–5.1, however, have traditionally focused on local planning and typically do not address the issues caused by wide-area extreme heat and cold weather events on a regional or interconnection scale.[91]

65. Reliability Standard TPL–001–5.1 does not contemplate the consideration of impacts from wide-area events[92] that may impact multiple planning coordinators simultaneously; in contrast, TPL–001–5.1 only requires identifying and evaluating selected wide-area events resulting from conditions such as loss of a large gas pipeline into a region or multiple regions that have significant gas-fired generation, and does not specify studying potential issues resulting from extreme heat and cold.[93]

66. Failure to study the wide-area impact of extreme heat or extreme cold weather conditions when an entity conducts transmission planning, could result in reliability issues that simultaneously affect multiple regions to remain undetected in the long-term planning horizon. This, in turn, could lead to otherwise avoidable situations where the system is one contingency away from voltage collapse and uncontrolled blackouts.

67. Based on prior events, we preliminarily find that it is appropriate that the study criteria for extreme heat and cold events include a consideration of wide-area conditions affecting neighboring regions and their impact on one planning area's ability to rely on the resources of another region during the weather event. To identify opportunities for improved wide-area planning studies and coordination, we seek comment on: (1) whether wide-area planning studies should be defined geographically or electrically; (2) which entities should oversee and coordinate the wide-area planning models and studies (*e.g.,* reliability coordinators, regional planning groups); (3) which entities should have responsibility to address the results of the studies, and how they should communicate those results among transmission planners; and (4) how to develop corrective action plans that mitigate issues that require corrective action by, and coordination among, multiple transmission owners.

[86] NERC, *Compliance Implementation Guidance Real-time Assessment Quality of Analysis,* at 3 (May 2019), *https://www.nerc.com/pa/comp/guidance/EROEndorsedImplementationGuidance/TOP-010-1(i)%2520R3%2520and%2520IRO-018-1(i)%2520R2%2520-%2520RTA%2520Quality%2520of%2520Analysis%2520(OC).pdf.*

[87] Indian Institute of Technology Patna, *Power System Dynamics and Control,* at 1, (Power System Dynamics), *https://www.iitp.ac.in/~siva/2022/ee549/Introduction_Power_System_Stability.pdf.*

[88] *Id.* at 3.

[89] *Id.* at 15.

[90] Reliability Standard MOD–032–1, Requirements R1 and R2.

[91] June 1, 2021 Tr. 153: 2–9. (Frederick Heinle, Assistant People's Counsel, Office of the People's Counsel for the District of Columbia).

[92] Reliability Standard TPL–001–5.1, Table 1, Steady State & Stability Performance Extreme Events, uses the term ''wide area events'' to refer to such things as loss of two generating stations resulting from conditions including severe weather or wildfires, distinguishing such events from ''local area events'' affecting the transmission system, which may involve the isolated loss of a transmission tower, substation, or generating station.

[93] Reliability Standard TPL–001–5.1, Table 1, Steady State & Stability Performance Extreme Events, Section 3(a)(i).

3. Study Concurrent Generator and Transmission Outages

68. Concurrent outages occur nearly simultaneously in different planning areas due to the same extreme weather events, such as the unplanned generator outages associated with the major extreme heat and cold events discussed above. Generation resources that are sensitive to severe weather conditions may cease operation during extreme heat and cold events, thus contributing to wide-area concurrent outages. In addition, the performance of power transformers, transmission lines, and other equipment degrades under extreme heat and may have to come out of service. Extreme heat could lead to significant derating, reduced lifetime, and even possible failures of power transformers, while extreme cold could lead to at least temporary facility transmission outages.[94]

69. Therefore, modeling the loss of these generators and transmission equipment during extreme heat and cold weather events would allow planners to determine the effects of potential concurrent transmission and generator outages and study the feasibility (*i.e.,* availability and deliverability) of external generation resources that could possibly be imported to serve load during such events, thereby minimizing the potential impact of extreme heat and cold events on customers.[95] Modeling concurrent generator and transmission outages would also allow planners to better identify appropriate solutions to be incorporated into corrective action plans.

70. Extreme cold effects on generators vary by generator type, cooling systems, and fuel sources.[96] Transmission planners commonly assume that the failures of individual generators are independent. This understanding, however, is inconsistent with documented historical events, that show multiple coincident outages due to the same cause. For instance, the 2021 extreme cold event demonstrated the limitations of such an assumption. Between February 8 and February 20, 2021, approximately 44% of generator outages were caused by freezing issues, 31% by fuel issues related to extreme cold weather, and another 21% were caused by mechanical/electrical failures related to cold weather.[97] Meanwhile, wind turbine generators were the second largest share of individual generating units after gas-fired generators that suffered freezing issues in the southern part of SPP and Texas, as temperatures dropped well below zero degrees Fahrenheit.[98] Transmission facilities were also affected in the short-term, as transmission operators managed to return them into service.[99] Likewise, the 2018 Cold Weather Event Report revealed that there is a high correlation between generator outages and cold temperatures, indicating that as temperatures decrease, unplanned generator outages and derates increase.[100]

71. Similarly, extreme heat impacts on generators vary by generator type, and the common implication is a reduction in the overall generation capacity throughout the wide area affected by the heat event.[101] Generally, extreme heat poses more of a threat to the functioning of a solar panel than extreme cold. As temperatures increase above 77 degrees Fahrenheit, which is a standard test condition, solar panels generate less voltage and become less efficient,[102] producing less power for a given amount of solar energy depending on the solar panel temperature coefficient.[103] For example, during the 2020 heat event in California, wind and solar generation were largely unavailable.[104] While extreme cold temperatures on clear days would not negatively impact energy output. Also, solar panels are built to be waterproof to protect the electronic components against heavy rain and to withstand hailstorms. However, snow,[105] ice accumulation, or cloud cover that commonly accompany extreme cold weather could prevent the panels from receiving as much sunlight, which would limit their power production and efficiency.

72. Requiring transmission planners and planning coordinators to study concurrent generator and transmission failures under extreme heat and cold events is one way to address the reliability gap. Accounting for concurrent outages in planning studies would provide a more realistic assessment of system conditions (*i.e.,* updated conditions based on historic benchmarked performance) during potential extreme heat and cold events and will help better assess the probability of potential occurrences of cascading outages, uncontrolled separation, or instability. Transmission planners and planning coordinators could also model the derating and possible loss of wind and solar generators, as well as natural gas generators sensitive to extreme heat and cold conditions. To identify the scope of these planning studies, we are seeking comments on: (1) the assumptions (*e.g.,* weather forecast, load forecast, transmission voltage levels, generator types, multi-day low wind, solar event, etc.) used in modeling of concurrent outages due to extreme heat and cold weather events; (2) what assumptions should be included when performing modeling and planning for generators sensitive to extreme heat and cold; (3) how the impact of loss of generators sensitive to extreme heat and cold should be factored into long-term planning; (4) the extent of neighboring systems' or planning areas' outages that should be modeled in transmission planning studies; and (5) whether a certain threshold of penetration of wind, solar generation, and natural gas generators should trigger additional analyses.

4. Sensitivity Analysis

73. As part of its revisions to TPL–001–5.1, NERC should establish a requirement for sensitivity analysis for

[94] MIT News, *Preventing the Next Blackout* (Dec. 5, 2017), *https://news.mit.edu/2017/mit-study-climate-change-effects-large-transformers-1205; see also* IEEE Standard C57.91–2011, Table 2; IEEE Standard C57.91–2011, Table 3; 2021 Cold Weather Event Report at 95.

[95] The Cold Weather Reliability Standards referenced *supra* take effect in April 2023, and are expected to improve generating unit performance and help alleviate some of the unsustainable levels of generation outages seen during extreme events. Improved transmission planning alone cannot overcome the challenges associated with generator outages during extreme events. Therefore, both the Cold Weather Reliability Standards and this proposal to improve transmission planning are necessary for the Bulk Power System to perform reliably in the face of future extreme weather events.

[96] Polar Vortex Review at 12.

[97] 2021 Cold Weather Event Report at 15–16.

[98] *Id.* at 75.

[99] *Id.* at 95.

[100] 2018 Cold Weather Event Report at 80.

[101] Department of Energy, *U.S. Energy Sector Vulnerabilities to Climate Change and Extreme Weather, Department of Energy,* at 19–22 (July 11, 2013), *https://www.energy.gov/sites/default/files/2013/07/f2/20130716-Energy%20Sector%20Vulnerabilities%20Report.pdf* (listing the impacts of increased ambient air temperature on the various types of generators).

[102] IEEEXplore, International Conference on Current Trends in Computer, Electrical, Electronics and Communication (ICCTCEEC–2017), *Effect of Temperature on Performance of Solar Panels—Analysis, https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=8455109.*

[103] Temperature coefficient describes the percentage of power output that is lost by a specific solar panel as the temperature rises above 77 degrees Fahrenheit.

[104] 2020 Heat Event Report at 11.

[105] A recent study by Sandia National Labs identified snow events as causing the largest performance reductions at solar facilities. *See* Nicole D. Jackson & Thushara Gunda, *Evaluation of Extreme Weather Impacts on Utility-Scale Photovoltaic Plant Performance in the United States,* 302, Applied Energy, 1:7 (2021), *https://www.researchgate.net/publication/353944206_Evaluation_of_extreme_weather_impacts_on_utility-scale_photovoltaic_plant_performance_in_the_United_States.*

transmission planners and planning coordinators to consider system models and sensitivity cases when assessing extreme heat and extreme cold weather. A sensitivity case is a variation from the base case that helps a transmission planner to determine if the results are sensitive to changes in the inputs. Reliability Standard TPL–001–5.1, Requirement R2.1.4 requires that sensitivity power flow cases be used to demonstrate the impact of changes to the basic assumptions used in the models for system peak load or system off-peak load. These changes include, among other things, conditions that vary with temperature; specifically, load, generation, and system transfers.[106] While requiring the variation of one of the specified conditions to demonstrate a measurable change, it does not require the simultaneous variation of load, generation and transfers necessary to model conditions that reflect extreme heat or cold weather conditions, thus potentially causing major reliability issues (*i.e.,* widespread outages, cascading, etc.) to remain overlooked and undetected in the planning horizon. To model the effect of extreme heat or cold weather, demand probability scenario cases (90/10, 80/20, 50/50),[107] generators that are affected by these events (*i.e.,* wind tripping off, solar dropping off, gas plants not operational due to gas restrictions/freeze-offs, etc.), and transfer levels need to be defined and modeled in sensitivity analyses.

74. Therefore, we seek comment on: (1) requiring transmission planners and planning coordinators to assess reliability in the planning horizon for sensitivity cases in which multiple inputs, *e.g.,* load and generator failures, change simultaneously during extreme heat and cold events; and (2) the range of factors and the number of sensitivity cases that should be considered to ensure reliable planning.

5. Modifications to the Traditional Planning Approach

75. In modifying TPL–001–5.1, we propose to direct NERC to consider planning methods and techniques that diverge from past Reliability Standard requirements.[108] Reliability Standard TPL–001–5.1 is based on a deterministic approach, which uses planned contingencies and definite performance criteria to study system response to various conditions. This approach yields accurate planning when the power supply is highly dispatchable, weather is predictable, and near-record peak demand is reached only a few days a year.[109] However, the current planning approach applied in Reliability Standard TPL–001–5.1 likely is not sufficient to accurately characterize the reliability risk from extreme heat and cold weather given the high degree of uncertainty inherent in predicting severe weather and its impact on generation resources, transmission, and load.

76. An alternative to the deterministic approach is to use probabilistic approaches in transmission planning. Probabilistic transmission planning captures random uncertainties in power system planning, including those in load forecasting, generator performance, and failures of system equipment. The probabilistic method is not intended to replace the deterministic criterion but adds one more dimension to enhance the transmission planning process.[110]

77. NERC has recognized the need to incorporate probabilistic approaches into planning activities. For example, NERC's Probabilistic Assessment Working Group develops probabilistic analysis that contributes to NERC's Long-Term Reliability Assessment every other year. NERC is also investigating the development of probabilistic methods to study resource adequacy, energy sufficiency, and transmission adequacy for reliable delivery in composite reliability studies as well as to develop enhanced reliability metrics.[111]

78. Therefore, to ensure reliable planning and operations in response to extreme heat and cold events, we believe that a new or modified approach may be beneficial to capture these events during the planning process. The new approach could include elements of both deterministic and probabilistic approaches to assess reliability outcomes. For example, the January 2018 South Central Cold Weather Event in the South Central part of the country was a near-miss where MISO would have been required to perform firm load shed if its next-worst contingency occurred (*i.e.,* outage of 1,163 MW generation in MISO South). The load shed would have been needed to alleviate low voltages at many locations that would have been significantly below their limits due to the failure of almost 200 generating units. Including scenarios in the planning process in which generator failures are probabilistically evaluated could result in a planning approach better prepared to ensure reliable outcomes compared to the existing planning requirements under Reliability Standard TPL–001–5.1.

79. One option to modify the existing planning approach would be to expand the required deterministic studies to include probabilistically developed scenarios. Therefore, we seek comments on industry's experience and opinion on combining or layering probabilistic and deterministic approaches when planning for extreme heat and cold weather conditions in the context of Reliability Standard TPL–001–5.1. Specifically, we seek comments on the use of the proposed hybrid planning approach and: (1) the assumptions from the deterministic and probabilistic approaches that should be applied to study extreme heat and cold weather events; (2) the potential planning challenges from combining the two planning approaches; (3) the costs associated with adjustments to the currently applied deterministic approach; (4) the implementation period necessary for proposed changes; and (5) the reliability benefits that could result.

6. Coordination Among Planning Coordinators and Transmission Planners and Sharing of Study Results

80. Reliability Standard TPL–001–5.1 cross-refences Reliability Standard MOD–032–1 (Data for Power System Modeling and Analysis), which establishes consistent modeling data requirements and reporting procedures

[106] To effectively model the Bulk-Power System, transmission planners need make assumptions that create scenarios that are valid, realistic, and defendable. *See* North American Transmission Forum, TPL–001–4 Reference Document, at 8–9 (Aug. 2, 2021), *https://www.natf.net/docs/natf/documents/resources/planning-and-modeling/natf-tpl-001-4-reference-document.pdf.* Specifically, appropriate assumptions and corresponding model adjustments need to be made regarding load (demand), generation (particularly that of renewables), and transfers (power flows between regions or zones). *See* National Renewable Energy Laboratory, *Report: The Evolving Role of Extreme Weather Events in the U.S. Power System with High Levels of Variable Renewable Energy* (Dec. 2021), *https://www.nrel.gov/docs/fy22osti/78394.pdf.*

[107] Demand scenario cases are given designations based on the percent probability the actual system's peak demand for the period under study will be above or below certain level. For example, for a 90/10 case, the system demand is modeled at a level that there is a 90% probability the actual system demand will be below that level and a 10% probability that the actual system demand will be above that level. Other designations follow similarly using different percentages.

[108] We are not making a proposed finding at this time that modifications to the traditional planning approach are necessary to properly plan for extreme weather. Nonetheless, there is sufficient concern such that we believe NERC should consider alternative approaches when developing a new or modified Reliability Standard in response to a final rule in this proceeding.

[109] June 1, 2021 Tr. 31 (Barton).

[110] IEEE Explore, *Probabilistic Planning of Transmission Systems: Why, How and an Actual Example,* at 1 (July 2008), *https://ieeexplore.ieee.org/document/4596093.*

[111] NERC Post-Technical Conference Comments 3.

for development of planning horizon cases necessary to support analysis of the reliability of the interconnected transmission system. Reliability Standard MOD–032–1 ensures adequate means of data collection for transmission planning. It requires each balancing authority, generator owner, load serving entity, resource planner, transmission owner, and transmission service provider to provide steady-state, dynamic, and short circuit modeling data to its transmission planner(s) and planning coordinator(s). The modeling data is then shared pursuant to the data requirements and reporting procedures developed by the transmission planner and planning coordinator as set forth in Reliability Standard TPL–001–5.1, Requirement R1.

81. While balancing authorities and other entities must share system information and study results with their transmission and planning coordinator pursuant to Reliability Standards MOD–032–1 and TPL–001–5.1 as described above, there is no required sharing of such information—or required coordination—among planning coordinators and transmission planners with transmission operators, transmission owners, and generator owners, thus limiting the benefits of additional modeling. Sharing system information and study results and enhancing coordination among these entities for extreme heat and cold weather events could result in more representative planning models by better: (1) integrating and including operations concerns (*e.g.,* lessons learned from past issues including corrective actions and projected outcomes from these actions, evolving issues concerning extreme heat/cold) in planning models; and (2) conveying reliability concerns from planning studies (*e.g.,* potential widespread cascading, islanding, significant loss of load, blackout, etc.) as they pertain to extreme heat or cold.

82. Therefore, as part of its revisions, NERC should require system information and study results sharing, and coordination among planning coordinators and transmission planners with transmission operators, transmission owners, and generator owners for extreme heat and cold weather events. To better understand the benefits of the suggested actions, we are inviting comments on: (1) the parameters and timing of coordination and sharing; (2) specific protocols that may need to be established for efficient coordination practices; and (3) potential impediments to the proposed coordination efforts.

### *C. Implement a Corrective Action Plan If Performance Standards Are Not Met*

83. Pursuant to FPA 215(d)(5), we propose to direct NERC to modify Reliability Standard TPL–001–5.1 to require corrective action plans that include mitigation for any instances where performance requirements for extreme heat and cold events are not met. Under the currently effective Reliability Standard TPL–001–4, planning coordinators and transmission planners are required to evaluate possible actions to reduce the likelihood or mitigate the consequences of extreme events but are not obligated to develop corrective action plans. Specifically, if such events are found to cause cascading outages, they need only be evaluated for possible actions designed to reduce their likelihood or mitigate their consequences and adverse impacts.[112] Accordingly, because of their potential severity, we believe that extreme heat and cold weather events should require evaluation and the development and implementation of corrective action plans to help protect against system instability, uncontrolled separation, or cascading failures as a result of a sudden disturbance or unanticipated failure of system elements.

84. Consistent with the existing requirements of TPL–001–5.1, we believe it is appropriate to provide responsible entities with the flexibility to determine the best actions to include in their corrective action plan to remedy any identified deficiencies in performance. Examples of actions that could be included in a corrective action plan are planning for additional contingency reserves or implementing new energy efficiency programs to decrease load, increasing intra- and inter-regional transfer capabilities, transmission switching, or adjusting transmission and generation maintenance outages based on longer-lead forecasts. Well planned mitigation and corrective actions that account for some of these contingencies will minimize loss of load and improve resilience during extreme heat and cold weather events.

85. In particular, increases in interregional transfer capability could be considered as one option to address potential reliability issues during extreme weather events. Such transfer capability would allow an entity in one region with available energy to assist one or more entities in another region that is experiencing an energy shortfall due to the extreme weather event. Increasing interregional transfer capability may be a particularly robust option for planning entities attempting to mitigate the risks associated with concurrent generator outages over a wide area.[113]

86. Recent events have shown that interregional transfer capability can be critical to maintaining reliability during extreme weather events. For example, during the 2021 Cold Weather Event in Texas and the South Central United States, SPP and MISO imported power from other balancing authorities to make up for their increasing load levels and generation shortfalls, because the eastern part of the Eastern Interconnection did not have the same arctic weather conditions. Specifically, MISO was able to import large amounts of power from neighbors to the east (*e.g.,* PJM), and SPP was able to transfer some of that power through MISO into its region. Those east-to-west transfers into MISO peaked at nearly 13,000 MW.[114] PJM had additional energy available to be transferred but could not facilitate the transfer due to internal congestion in neighboring systems.[115]

87. Recent events have also shown that the loss of interregional transfer capability can have significant implications for system reliability during extreme weather events. For instance, during the August 2020 California Heatwave Event, there was a reduction in the transfer capability through the Northwest AC Intertie by as much as 1,250 MW due to another extreme weather event that occurred earlier in 2020 which damaged transmission facilities in the northwest part of the Western Interconnection. The transfer capability of the intertie linking

[112] Reliability Standard TPL–001–4, Requirements R3.3.5 and R4.4.5 require computer simulation analyses of extreme events listed in Table 1 of the standard (some listed are examples and are not definitive), and if the analysis concludes there is Cascading caused by the occurrence of extreme events, an evaluation of possible actions designed to reduce the likelihood or mitigate the consequences and adverse impacts of the event(s) shall be conducted.

[113] In this NOPR we refer to interregional transfer capability strictly in the context of improving the reliability of the Bulk-Power System through improved transmission system planning and associated modifications to NERC's Reliability Standards. As such, our proposals here are distinct from the requirements for interregional coordination and cost allocation for public utility transmission providers. *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011), *order on reh'g,* Order No. 1000–A, 77 FR 32184 (May 31, 2012), 139 FERC ¶ 61,132, *order on reh'g and clarification,* Order No. 1000–B, 77 FR 64890 (Oct. 24, 2012), 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014).

[114] 2021 Cold Weather Event Report at 15.

[115] PJM Post-Conference Comments at 19–20.

Canadian and U.S. power systems was also reduced by up to 750 MW due to other planned maintenance outages, further limiting the ability to transfer energy from the north to the load centers in the south.[116]

88. Thus, we believe that there may be potential benefits in better incorporating interregional transfer capability into corrective action plans, where warranted and encourage NERC to consider establishing requirements that appropriately recognize the value of interregional transfer capability.

89. To ensure corrective action plans are developed and implemented in a timely fashion, we invite comments on the timeframe for developing such corrective action plans and sharing of the corrective actions with other interconnected planning entities.

### *D. Other Extreme Weather-Related Events and Issues*

90. While the focus of this NOPR is on extreme heat and cold weather events, we recognize that long-term drought, particularly when occurring in conjunction with high temperatures, could also pose a serious risk to Bulk-Power System reliability over a wide geographical area.[117] In particular, we are concerned that drought may cause or contribute to conditions that affect reliable operation of transmission systems such as transmission outages, reduced plant efficiency, and reduced generation capacity.

91. Some examples of recorded events of reduced power production from drought were seen in the Midwest in 2007 forcing nuclear and coal-fired plants to shut down and curtail operations and along the Mississippi River in 2006, which affected nuclear plants in Illinois and Minnesota.[118] According to a study conducted by NOAA's drought task force, climate change has intensified the drought conditions gripping the Southwestern United States, the region's most severe on record, with precipitation at the lowest 20-month level documented since 1895.[119] The study indicates that the drought that emerged in early 2020 in California, Nevada and the ''Four Corners'' states of Arizona, Utah, Colorado and New Mexico has led to unprecedented water shortages in reservoirs across the region, while exacerbating devastating western wildfires over the past two years.[120]

In addition, NERC's 2022 Summer Reliability Assessment concludes that in 2022 drought threatens wide areas of North America, mainly in the western United States and Texas, resulting in challenges to area electricity supplies.[121]

92. Therefore, we seek comments on whether drought should be included along with extreme heat and cold weather events within the scope of Reliability Standard TPL–001–5.1 system planning requirements. These comments will assist the Commission in determining whether the final rule should direct that NERC further modify Reliability Standard TPL–001–5.1 to require transmission planners to conduct transmission planning assessments of the effects of drought conditions on transmission system operations.

93. Finally, we invite comments on whether other extreme weather events with significant impact on the reliability of the Bulk-Power System (*e.g.,* tornadoes, hurricanes) could also be considered and modeled in the future to improve system performance during these events.

## V. Information Collection Statement

94. The information collection requirements contained in this Notice of Proposed Rulemaking are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[122] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[123] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

95. The proposal to direct NERC modify existing Reliability Standard TPL–001 (Transmission System Planning Performance Requirements), is covered by, and already included in, the existing OMB-approved information collection FERC–725 (Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards; OMB Control No. 1902–0225),under Reliability Standards Development.[124] The reporting requirements in FERC–725 include the ERO's overall responsibility for developing Reliability Standards, such as the TPL–001 Reliability, which is designed to ensure the BES will operate reliably over a broad spectrum of system conditions and following a wide range of probable contingencies.[125] The Commission will submit to OMB a request for a non-substantive revision of FERC–725 in connection with this NOPR.

## VI. Environmental Assessment

96. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[126] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[127] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

## VII. Regulatory Flexibility Act Certification

97. The Regulatory Flexibility Act of 1980 (RFA) [128] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities.

98. We are proposing only to direct NERC, the Commission-certified ERO, to develop modified Reliability Standards that require enhanced long-term system transmission planning designed to prepare for extreme heat and cold

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[116] 2020 Heat Event Report at 6.

[117] DOE, *Impacts of Long-term Drought on Power Systems in the U.S. Southwest,* at 5, *https://www.energy.gov/sites/prod/files/Impacts%20of%20Long-term%20Drought%20on%20Power%20Systems%20in%20the%20US%20Southwest%20%E2%80%93%20July%202012.pdf.*

[118] *Id.* at 6.

[119] NOAA, *Assessment Report the 2020–2021 Southwestern U.S. Drought,* at 6, *https://cpo.noaa.gov/MAPP/DTF4SWReport.*

[120] Reuters, *Southwest U.S. Drought, Worst in a Century, Linked by NOAA to Climate Change* (Sept. 21, 2021), *https://www.reuters.com/business/environment/southwest-us-drought-worst-century-linked-by-noaa-climate-change-2021-09-21/#:~:text=The%20drought%20emerged%20in%20early,two%20years%2C%20the%20report%20noted.*

[121] NERC, *2022 Summer Reliability Assessment,* at 5 (May 2022), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf.*

[122] 44 U.S.C. 3507(d).

[123] 5 CFR 1320.11.

[124] Reliability Standards Development as described in FERC–725 covers standards development initiated by NERC, the Regional Entities, and industry, as well as standards the Commission may direct NERC to develop or modify.

[125] Reliability Standard TPL–001–4, Purpose.

[126] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[127] 18 CFR 380.4(a)(2)(ii) (2021).

[128] 5 U.S.C. 601–612.

weather conditions.[129] Therefore, this Notice of Proposed Rulemaking will not have a significant or substantial impact on entities other than NERC. Consequently, the Commission certifies that this Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities.

99. Any Reliability Standards proposed by NERC in compliance with this rulemaking will be considered by the Commission in future proceedings. As part of any future proceedings, the Commission will make determinations pertaining to the Regulatory Flexibility Act based on the content of the Reliability Standards proposed by NERC.

## VIII. Comment Procedures

100. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 26, 2022. Comments must refer to Docket No. RM22–3–000, and must include the commenter's name, the organization they represent, if applicable, and address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

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

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

## IX. Document Availability

103. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

104. 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.

105. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's 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.*

By direction of the Commission. Commissioner Danly is concurring with a separate statement attached. Commissioner Clements is concurring with a separate statement attached. Commissioner Phillips is concurring with a separate statement attached.

Issued: June 16, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Transmission System Planning Performance Requirements for Extreme Weather
Docket No. RM22–10–000

(Issued June 16, 2022)

DANLY, Commissioner, *concurring:*

1. I concur in today's notice of proposed rulemaking directing the North American Electric Reliability Corporation (NERC) to submit modifications to Reliability Standard TPL–001–5.1 to address reliability concerns related to transmission system planning.[130] It will take over two years, at a minimum, from this notice of proposed rulemaking (NOPR) to the ultimate implementation of any such changes. Reliability Standard development is neither swift nor agile, and this NOPR will not, indeed cannot, timely address the projected risk of widespread blackouts this summer,[131] nor can they be in place quickly enough to address future summer and winter reliability challenges over the next couple of years. Yet, I agree it is an important (albeit small) step to establish mandatory and enforceable compliance obligations to promote proactive planning for weather-related events.

2. The NOPR makes use of, indeed bases our action upon, an ever-growing narrative: reliability challenges arise primarily from weather-related events.[132] But even if one were to grant that certain parts of the United States were experiencing statistically unusual weather when compared to historical baselines, that has *absolutely nothing* to do with whether the markets and regulated utilities are procuring

[129] *Cf. Cyber Sec. Incident Reporting Reliability Standards,* Notice of Proposed Rulemaking, 82 FR 61499 (Dec. 28, 2017), 161 FERC ¶ 61,291 (2017) (proposing to direct NERC to develop and submit modifications to the NERC Reliability Standards to improve mandatory reporting of Cyber Security Incidents, including incidents that might facilitate subsequent efforts to harm the reliable operation of the BES); *Internal Network Sec. Monitoring for High and Medium Impact Bulk Elec. Sys. Cyber Sys.,* 178 FERC ¶ 61,038 (2020) (proposing to direct NERC to new or modified Reliability Standards that require internal network security monitoring within a trusted Critical Infrastructure Protection networked environment for high and medium impact Bulk Electric System Cyber Systems).

[130] *Transmission Sys. Planning Performance Requirements for Extreme Weather,* 179 FERC ¶ 61,195 (2022).

[131] Chairman Glick says that I am ''prone to hyperbole'' when I warn that blackouts are the likely outcome of the majority's misguided policies to prop up renewables at the expense of competitive markets and existing fossil resources. Rich Heidorn Jr., *Summer Forecasts Spark Warnings of 'Reliability Crisis' at FERC,* RTO Insider (May 19, 2022), *https://www.rtoinsider.com/articles/30170-summer-forecasts-spark-warnings-reliability-crisis-ferc.* Chairman Glick appears to be confusing ''hyperbole'' with ''reality.'' California and Texas have already experienced blackouts. Over two-thirds of the nation faces ''elevated [reliability] risk'' this summer. Ethan Howland, *FERC commissioners respond to elevated power outage risks across two-thirds of US, Utility Dive* (May 20, 2022), *https://www.utilitydive.com/news/ferc-nerc-power-outage-risks-summer-drought/624111/* (''At its monthly meeting Thursday, Federal Energy Regulatory Commission members dissected the North American Electric Reliability Corp.'s warning that roughly two-thirds of the United States faces [sic] heightened risks of power outages this summer.'').

[132] *See* Chairman Glick (*@RichGlickFERC*), Twitter (May 19, 2022, 11:13 a.m.), *https://twitter.com/RichGlickFERC/status/1527306459263881223?s=20&t=3a4C-1cac3nmFkjZyvoUDA* (''Extreme weather may be the single most important factor impacting #grid #reliability & the impacts of expected heat, drought, wildfires, hurricanes, & other events—all pose a big threat. Keeping eye on West, ERCOT, & parts of MISO this summer.''); Benjamin Mullin, *Climate Change is Straining California's Energy System, Officials Say,* N.Y. Times (May 6, 2022), *https://www.nytimes.com/2022/05/06/business/energy-environment/california-electricity-shortage.html.*

sufficient generation of the correct type to ensure resource adequacy and system reliability. We cannot blame our problems on the weather. The problem is federal and state policies which, by mandate or subsidy, spur the development of *weather dependent* generation resources at the expense of the dispatchable resources needed for system stability and resource adequacy. This is seen in particularly stark terms in our markets in which subsidies, combined with failed market design, warp price signals. This destroys the incentives required to ensure the orderly entry, exit, and retention of the necessary quantities of the necessary types of generation. The thinner and thinner margins that result render the Bulk-Power System more and more susceptible to the caprices of weather. We have been warned by credible sources on the matter: NERC,[133] the RTOs,[134] and Commission staff.[135]

3. As more nuclear [136] and coal plants [137]—with their high capacity factors and onsite fuel—announce early retirements, the dispatchable resources that remain are predominantly natural gas generators. Backstopping weather-dependent resources with gas generators, largely dependent on just-in-time delivery of gas, raises its own set of reliability concerns, particularly in areas—like New England—with inadequate pipeline infrastructure. On top of this, the Commission has delayed the processing of pipeline certificates and cast a chill over the pipeline industry with its ''draft policy statements'' [138] and orders throwing the finality of fully litigated certificates into doubt.[139] Under pressure to reduce emissions at all costs, pipelines have moved to electrify compressor stations, furthering an unhealthy co-dependency between the gas and electric systems. And the efforts of politically motivated financial institutions to cut fossil fuel producers' access to capital has added to the current supply crunch.[140] Yet, we are led to believe that extreme weather is supposed to be the culprit for the nation's looming reliability woes. Not so.

4. The question of whether the weather is getting worse is a red herring. The much more relevant question is whether current system operations and tariff and market design are adequate to maintain reliability. The present high risk of reliability failures proves that they are not. That the policies of the Commission and other government bodies are undermining reliability is far more obvious than the question of whether, and how, the weather is getting worse and what specific effects that worsening weather might have on the stability of the electric system. That question of the weather's effect on reliability is a subject that doubtless merits study and planning, but misguided government policies are the root cause of the alarming reliability issues facing the nation, not the weather.

For these reasons, I respectfully concur.

James P. Danly,
*Commissioner.*

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Transmission System Planning Performance Requirements for Extreme Weather
Docket No. RM22–10–000

(Issued June 16, 2022)

CLEMENTS, Commissioner, *concurring:*

1. Today's Notice of Proposed Rulemaking (NOPR) is an important step to ensure that the North American Electric Reliability Corporation (NERC) builds upon existing practices to better account for extreme weather in transmission system planning. Together with the Notice of Proposed Rulemaking proposing to direct transmission providers to submit informational reports describing their current or planned policies and processes for conducting extreme weather vulnerability assessments,[1] it will facilitate steps to enhance the reliability of the electric system.

2. NERC already addresses extreme weather in several ways. For example, Reliability Standard TPL–001–4 requires planning coordinators and transmission planners to conduct an analysis of extreme weather events and

[133] *See generally* North American Electric Reliability Corp., *2022 Summer Reliability Assessment* (May 2022), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments %20DL/NERC_SRA_2022.pdf.* In addition, NERC has warned that system operators in areas of significant amounts of solar photovoltaic (PV) resources should be aware of the potential for resource loss events during grid disturbances. *Id.* at 6. NERC has further warned that ''[i]ndustry experience with unexpected tripping of [Bulk-Power System]-connected solar PV generation units can be traced back to the 2016 Blue Cut fire in California, and similar events have occurred as recently as Summer 2021. A common thread with these events is the lack of inverter-based resource (IBR) ride-through capability causing a minor system disturbance to become a major disturbance. The latest disturbance report reinforces that improvements to NERC Reliability Standards are needed to address systemic issues with IBRs.'' *Id.* NERC also explains that ''because the electrical output of variable energy resources (*e.g.,* wind, solar) depends on weather conditions, on-peak capacity contributions are less than nameplate capacity.'' *Id.* at 45.

[134] *See, e.g.,* California Independent System Operator Corp., *2022 Summer Loads and Resources Assessment* (May 18, 2022), *http://www.caiso.com/Documents/2022-Summer-Loads-and-Resources-Assessment.pdf;* Midcontinent Independent System Operator (MISO), *Lack of Firm generation may necessitate increased reliance on imports and use of emergency procedures to maintain reliability* (Apr. 28, 2022), *https://www.misoenergy.org/about/media-center/miso-projects-risk-of-insufficient-firm-generation-resources-to-cover-peak-load-in-summer-months/;* PJM Interconnection, L.L.C. (PJM), *Energy Transition in PJM: Frameworks for Analysis* (Dec. 15, 2021), *https://pjm.com/-/media/committees-groups/committees/mrc/2021/20211215/20211215-item-09-energy-transition-in-pjm-whitepaper.ashx* (addressing renewable integration).

[135] *See Staff Presentation on 2022 Summer Energy Market and Reliability Assessment* (AD06–3–000), FERC, at slide 9 (May 19, 2022), *https://www.ferc.gov/news-events/news/presentation-report-2022-summer-energy-market-and-reliability-assessment* (identifying the Western U.S., Texas, MISO and Southwest Power Pool as ''[p]arts of North America are at elevated or high risk of energy shortfalls during peak summer conditions'') (emphasis in original); *id.* at slide 10 (In MISO, ''[g]eneration capacity declined 2.3% since 2021 resulting in [a] lower reserve margin'' and the ''[n]orth and central areas [are] at risk of reserve shortfall in extreme temperatures, high generation outages, or low wind'' with ''[s]ome risk of insufficient operating reserves at normal peak demand.'').

[136] U.S. Energy Information Administration, *U.S. nuclear electricity generation continues to decline as more reactors retire* (Apr. 8, 2022), *https://www.eia.gov/todayinenergy/detail.php?id=51978.*

[137] Ethan Howland, *Coal plant owners seek to shut 3.2 GW in PJM in face of economic, regulatory and market pressures,* Utility Dive (Mar. 22, 2022), *https://www.utilitydive.com/news/coal-plant-owners-seek-to-retire-power-in-pjm/620781/.*

[138] *See Certification of New Interstate Nat. Gas Facilities,* 178 FERC ¶ 61,107 (2022) (Danly and Christie, Comm'rs, dissenting)); *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.,* 178 FERC ¶ 61,108 (2022) (Danly and Christie, Comm'rs, dissenting); *see also Certification of New Interstate Nat. Gas Facilities,* 178 FERC ¶ 61,197, at P 2 (2022) (converting the two policy statements to ''draft policy statements''). It is worth noting that PJM and MISO filed comments on the draft policy statements. PJM and MISO May 25, 2022 Limited Reply Comments, Docket Nos. PL18–1–001 and PL21–3–001, at 4 (''[A]ny future Commission pipeline policy should consider the importance of ensuring that needed pipeline infrastructure can be timely sited, and ensure that the need for infrastructure to meet electric system reliability is affirmatively considered and not lost in the debate over the scope of environmental reviews to be undertaken by the Commission.'').

[139] *See, e.g., Algonquin Gas Transmission, LLC,* 174 FERC ¶ 61,126 (2021) (Danly and Christie, Comm'rs, dissenting).

[140] Matt Egan, *Energy crisis will set off social unrest, private-equity billionaire warns,* CNN Business (Oct. 26, 2021), *https://edition.cnn.com/2021/10/26/business/gas-prices-energy-crisis-schwarzman/index.html* (''Part of the problem, [Blackstone CEO Stephen Schwarzman] said, is that it's getting harder and harder for fossil fuel companies to borrow money to fund their expensive production activities, especially in the United States. And without new production, supply won't keep up.'').

[1] *One Time Informational Reports on Extreme Weather Vulnerability Assessments,* 179 FERC ¶ 61,196 (2022).

evaluate potential actions for reducing the likelihood or mitigating the consequences of the event creating adverse impacts.[2] NERC also recently adopted Cold Weather Reliability Standards, which require generators to prepare and implement plans for cold weather, and require the exchange of information between the balancing authority, transmission operator, and reliability coordinator about the generator's ability to operate under cold weather conditions to ensure grid reliability.[3] Further, NERC has prioritized improving bulk electric system resilience to wide-spread long-term extreme temperature events in its 2022 Enterprise Work Plan,[4] and is pursuing enhancements to reliability standards for the operational planning timeframe to address extreme weather via its Energy Reliability Assessment Task Force.[5] Yet even with these actions, utilities and grid operators remain underprepared for the changing climate and the increasing frequency of extreme weather it is bringing, as is evident in NERC's 2022 Summer Reliability Assessment. Therein, NERC highlights the elevated risk of an energy emergency due to the increased demand for electricity driven by above average temperatures combined with a reduced capacity because extreme drought conditions threaten the availability of hydroelectric energy for transfer.[6] Had the nation's utilities and grid operators better planned for climate change and the attendant increased likelihood of these conditions, they would be better prepared for the conditions we are likely to face this summer.

3. There is no more urgent priority for this Commission than to reform system planning so that it sufficiently contemplates and provides mechanisms to address the impact of extreme weather events on the electricity grid. Across geographies, regulatory regimes, regional resource mixes and market designs, the impact of extreme weather has vastly outpaced regulatory adaptation to it. So, I am glad to support this priority by voting for today's NOPR, which complements NERC's ongoing efforts to address the operational time frame and fills a gap by ensuring that Reliability Standards better account for extreme weather in planning. I write separately for two reasons.

4. First, while it represents an important step in tackling extreme weather's myriad impacts on the transmission system, strong follow through from NERC will be required to ensure a reliability standard that addresses extreme weather reliability challenges in a comprehensive and cost-effective manner. While the proposed rule seeks comments on whether drought should be included along with extreme heat and cold weather events within the scope of Reliability Standard TPL–001–5.1, I believe that what we already know about meteorological projections and drought's anticipated impacts on the electricity system compel the development of drought benchmark events in applicable regions of the country.[7] The question for me is not whether such events should be included, but how TPL–001–5.1 should cover the impact of drought induced reductions in supply on regions already experiencing unprecedented reductions in reservoir supply and increased wildfire risk. Further, NERC can facilitate cost effective implementation of these reliability standard modifications by requiring modeling of extreme weather events according to consistent planning rules, providing for consultation with states and other regulators in the development of corrective actions plans, and by considering of the interaction between this proposed Reliability Standard and related planning processes and rules, including the Commission's recently issued notice of proposed rulemaking regarding long-term regional transmission planning.[8] I urge stakeholders to provide recommendations to NERC as to how best to account for these considerations in commenting on this proposal.

5. Second, it is important to note that if we are to cost-effectively ensure system reliability as the frequency and intensity of extreme weather events continues to increase, further action is necessary to complement today's initial proposal. We have learned a good amount about the impact of extreme weather on the electricity system the hard way.[9] We have the opportunity to learn a great deal more from the substantial amount of important information and good ideas that stakeholders submitted in response to the Commission's inquiry into Climate Change, Extreme Weather, and Electric System Reliability in Docket No. AD21–13.

6. Themes that emerge from this collective experience and record include, at least, the need to consider: (1) establishing a process for setting explicit minimum interregional transfer capability requirements or otherwise identifying least regrets interregional solutions, (2) improved scheduling and coordination in non-RTO regions, and (3) ensuring that planning and market mechanisms appropriately reflect resource availability during extreme weather events, accounting for the possibility of common mode failures or other correlated outages.[10] As I provide in more detail below, I urge my colleagues to prioritize these complementary issues in the months to come.

### A. Ensuring Cost-Effective Implementation of This NOPR

7. The effectiveness of this NOPR depends upon NERC implementing it in a manner that comprehensively addresses extreme weather threats, provides for consistency in modeling scenarios and methods to the greatest extent possible, facilitates consultation with state regulators, and appreciates its interrelation with the Commission's Regional Planning NOPR. I urge NERC and stakeholders to provide feedback on the following issues, which may facilitate strengthening the effectiveness of the eventual reliability standard.

[2] Reliability Standard TPL–001–4; *see also* Notice of Proposed Rulemaking, *Transmission System Planning Performance Requirements for Extreme Weather* (Extreme Weather NOPR), 179 FERC ¶ 61,195, at PP 20–23 (2022) (discussing the requirements set forth in TPL–001–4).

[3] *See* Extreme Weather NOPR at PP 18–19 (discussing *Cold Weather Reliability Standards,* 176 FERC ¶ 61,119, at PP 1, 3 (2021)).

[4] *See* NERC, *2022 ERO Enterprise Work Plan Priorities,* at 3 (Nov. 4, 2021), available at *nerc.com/AboutNERC/StrategicDocuments/ERO_2022_Work_Plan_Priorities_Board_Approved_Nov_4_2021.pdf.*

[5] *See* NERC, *DRAFT Energy Management Recommendations for Long Duration Extreme Winter and Summer Conditions,* available at *https://www.nerc.com/comm/RSTC/ERATF/Combined-Energy-Management-Roadmap.pdf* (last accessed June 15, 2022).

[6] NERC, *2022 Summer Reliability Assessment,* at 7, 9 (May 2022), available at *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf.*

[7] *See* Extreme Weather NOPR at PP 90–92 (discussing the anticipated impacts of drought on the electricity system); *infra* P 8.

[8] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,* 179 FERC ¶ 61,028 (2022) (Regional Planning NOPR).

[9] Severe weather events have caused significant outages in the past decade. *See* NOPR at P 26 (discussing February 2011 Southwest Cold Weather Event where low temperatures caused uncontrolled blackouts throughout ERCOT's entire region, effecting 4.4 million electric customers), P 28 (discussing January 2014 Polar Vortex Cold Weather Event where increased demand for gas and the unavailability of gas-fired generation led to 35,000 MW of generator outages, and PP 31–32 (describing how the 2021 Cold Weather Event brought the largest controlled load shed in U.S. history, with more than 4.5 million people losing power, resulting in at least 210 people dying).

[10] While this statement highlights key priority areas for further inquiry, it is not intended to be exclusive. For instance, while I do not discuss it in detail here, I support Commissioner Phillips' call for an examination of whether the Commission should require revisions to RTO/ISO generation and transmission outage scheduling practices. *See* Extreme Weather NOPR (Phillips, Comm'r, concurring) at PP 8–9.

8. Initially, in addition to benchmark cases for extreme heat and cold, it seems prudent to include drought within the scope of Reliability Standard TPL–001–5.1. It is not surprising that, as noted in comments in the extreme weather docket, the more frequent and severe droughts occurring and expected to worsen in parts of the West and Southwest portend potentially significant grid impacts via limitations on hydroelectric generating facilities as well as thermal facilities that require water for cooling.[11] These drought conditions also, of course, serve as a main driver of what the Oregon Public Utility Commission describes as ''one of the most pressing and difficult issues: the rapidly increasing risk of highly destructive wildfires.'' [12] While the need to consider a drought benchmark case does not currently arise in all regions of the country, failure to contemplate the impacts of drought in relevant regions as part of equipping transmission planning to effectively address extreme weather would hamper a final Reliability Standard's impact.

9. Further, I am pleased to see the proposal's emphasis that ''it is important that transmission planners and planning coordinators likely to be impacted by the same types of extreme weather events use consistent benchmark events.'' [13] I urge NERC and stakeholders to contemplate the benefits of consistent modeling practices and modeling assumptions, and to provide feedback on how such consistency can best be achieved within the scope of this proposed rule.[14] Consistency in the inputs and assumptions feeding these cases and scenarios will allow for neighboring transmission planners and planning coordinators to work together towards cost-effective corrective actions, like increasing transfer capability, that could otherwise be missed for lack of apples-to-apples comparisons.

10. In addition, I encourage NERC to set forth a process that provides for consultation with states in the development of corrective action plans, given that many components of such plans could be state jurisdictional. As we see in other contexts, states' jurisdiction over their resource mix and the Federal Power Act's separation of authority between FERC and states means that consideration of some of the more cost-effective options for corrective actions, including reducing demand through energy efficiency and other demand side resource development, cannot be properly facilitated without state partnership.[15] States' decisions regarding the siting of generation and transmission facilities may also be impacted by extreme weather.[16] Consulting with states will both ensure that opportunities for addressing reliability changes with state-jurisdictional solutions are not missed, and provide a path to regulatory approval of such solutions in a manner that ensures both FERC and state regulators are informed of the costs and benefits of different corrective actions.[17] High-level coordination would also allow for harmony between the extreme weather modeling methods of states and those of NERC, such as ''referring to an agreed set of climate modeling parameters or scenarios,'' where appropriate in developing their own solutions.[18]

11. Further, in considering how to address the aims of this proposal cost effectively, it is important for NERC and stakeholders to consider how this proposal to reform TPL–001–5.1 may interact with the Commission's notice of proposed rulemaking on regional transmission planning and cost allocation.[19] That NOPR proposes to require transmission planners to engage in probabilistic, scenario-based planning for longer-term system needs, including at least one extreme weather scenario, but exempts shorter-term reliability planning from this scenario planning requirement. Since efficiencies are gained when considering multiple drivers for new transmission investment and it is likely that some amount of the corrective action that may emerge from the new reliability standard involves regional or interregional transmission development, it is important to derive stakeholders' perspectives on how potential performance standards and corrective actions under a revised reliability standard interact with both shorter-term reliability and proposed longer term planning, both in terms of consistency in planning inputs and the selection of cost-effective solutions. For instance, processes may be established to prioritize finding solutions via long-term planning in the first instance wherever possible, or to incorporate multiple drivers and probabilistic benefit cost assessments into the reliability planning process, so as to leverage the benefits of multi-value planning.

### B. Need for Further Actions To Ensure System Reliability

12. The Commission developed a robust record in response to the Commission's technical conference on climate change, extreme weather, and electric system reliability, and the Commission's technical conference to discuss resource adequacy developments in the Western Interconnection.[20] Today's NOPR will facilitate better planning for extreme weather events, but the record in those dockets, as well as in the Commission's inquiry into potential improvements in transmission system planning,[21] suggests action is necessary on several fronts to better facilitate cost-effective solutions. It is important to highlight three areas for which further inquiry is merited: [22] (1) increasing interregional transfer capability; (2) improving transmission scheduling and coordination in non-RTO regions; and (3) ensuring that planning and market mechanisms properly reflect resource availability during extreme weather

[11] *See, e.g.,* Comments of Environmental Defense Fund and Columbia Law School Sabin Center for Climate Change Law, Docket No. AD21–13, at 3 (filed Sept. 27, 2021) (''[C]hanges to the availability of water for cooling at thermal power plants and for hydroelectric generation will depart from historical patterns.''); Comments of the California Independent System Operator, Docket No. AD21–13 at 3 (filed April 15, 2021) (noting that drought already ''has affected the availability of hydroelectric facilitates in some years'').

[12] Comments of the Oregon Public Utility Commission, Docket No. AD21–13, at 2 (filed Apr. 14, 2021).

[13] Extreme Weather NOPR at P 52.

[14] *See* Comments of the Institute for Policy Integrity Docket No. AD21–13, at 8 (filed Apr. 14, 2021) (emphasizing potential benefits of consistent modeling practices); *see also* Pre-Technical Conference Comments of Exelon Corporation Docket No. AD21–13, at 14 (filed Apr. 15, 2021) (suggesting a process by which regulators and experts could ''define a reasonable range of scenarios describing potential climate-change related weather events and longer-term climate patters over the coming decades'').

[15] *See* Comments of PJM Interconnection, L.L.C. Docket No. AD21–13, at 9 (filed Apr. 15, 2021) (''[C]oordination with states (including state permitting agencies) on climate change and extreme weather events [is] critical.''); Comments of the R Street Institute Docket No. AD21–13, at 15 (filed Apr. 15, 2021) (''It is imperative for future reliability policy to harmonize the actions of federal and state authorities, at least to a basic degree.''); *see also* Motion to Intervene and Comments of the National Association of Regulatory Utility Commissioners Docket No. AD21–13, at 2 (filed Apr. 14, 2021) (urging the Commission to confer with the states ''where climate change and extreme weather events may implicate both federal and state issues'').

[16] *See* Comments of the National Rural Electric Cooperative Association Docket No. AD21–13, at 13 (filed Apr. 15, 2021). *See also id.* (''Most of the necessary decision-making and policy-making'' with regard to extreme weather ''will be at state and local levels.'').

[17] *See* Comments of the Institute for Policy Integrity, Docket No. AD21–13, at 8 (filed Apr. 14, 2021) (coordination would ''facilitat[e] state efforts to encourage development of flexible resources'').

[18] *Id.*

[19] Regional Planning NOPR, 179 FERC ¶ 61,028.

[20] *See* Docket Nos. AD21–13 and AD21–14.

[21] *See* Docket No RM21–17.

[22] While this statement highlights key priority areas for further inquiry, it is not intended to be exclusive. *See supra* n. 10.

events, accounting for the possibility of common mode failures or other correlated outages.

*1. Increasing Interregional Transfer Capability*

13. Numerous commenters have highlighted that interregional transfer capability renders the grid more resilient to extreme weather events.[23] As a recent report from The Brattle Group summarizes, ''[n]umerous studies have confirmed the significant benefits of expanding interregional transmission in North America, demonstrating that building new interregional transmission projects can lower overall costs, help diversify and integrate renewable resources more cost effectively, and reduce the risk of high-cost outcomes and power outages during extreme weather events.'' [24]

14. Yet Eversource Energy observes that ''[d]espite numerous studies suggesting the importance of increased interregional ties, most planning regions do not currently perform regular studies to assess whether increased interregional transmission capability could increase reliability during severe weather events.'' [25] This gap in planning, along with many other barriers to constructing interregional transfer capability,[26] threatens to dissuade transmission planners and planning coordinators from pursuing enhanced interregional transfer capability as a corrective action strategy, even where it is the most effective solution for customers.

15. As highlighted in section A above, consistent benchmark cases, scenarios, and other modeling practices will help to facilitate transmission planners and planning coordinators' pursuit of shared solutions, such as enhanced interregional transfer capability. Yet even with a common framework, coordination between regions is likely to prove challenging. Setting a minimum level of transfer capability could provide a unified planning goal for neighboring regions and thereby ameliorate this planning challenge.[27] American Electric Power (AEP) recommends that ''a minimum interregional transfer capability should be established through a thorough risk assessment on a nationwide, and region to region basis, using sensitivity analyses on the frequency of extreme weather events, projections of climate change impacts, and project retirements, constraints, and load changes over various timelines.'' [28] A capability requirement might vary, for instance, according to a region's generation mix, load, weather, and correlation with neighboring regions across these various attributes, and would protect system reliability by ''provid[ing] the ability to access additional generation in the event local (or even regional) generation is unable to serve customers or maintain reliability.'' [29]

16. A process for setting interregional transfer capability requirements could address a gap in existing regulation. As AEP argues, ''[b]ecause the current process evaluates transfer capability on a regional, or balancing authority-specific basis,'' it does not capture ''the efficiencies'' of connections ''between the regions.'' [30] ''[F]ailure to evaluate the grid as a whole makes the grid more susceptible to . . . the impacts of increasingly extreme weather events that impact large geographic areas,'' rendering ''the overall resilience and reliability the transmission grid less robust than it could be.'' [31]

17. As this discussion suggests, both section 215 and section 206 of the Federal Power Act are implicated by the development of interregional transfer capability. I urge stakeholders and this Commission to further explore whether section 215, section 206, or a combination thereof may serve as the basis for establishing specific minimum interregional transfer capability requirements or otherwise establishing least regrets interregional planning targets.

*2. Improving Transmission Scheduling and Coordination in Non-RTO Regions*

18. Enhanced transmission scheduling and coordination between balancing area authorities—in particular, RTO-to-non-RTO and non-RTO-to-non-RTO coordination—would improve grid reliability during extreme weather events, lower costs for customers, and level the regulatory playing field between RTO and non-RTO regions. Transmission scheduling and coordination can potentially be improved both via mandating a transition to flowgate methodology for determining transmission capacity in areas that continue to use path-based methodologies, and via facilitation of economic redispatch and narrowing the circumstances under which transmission curtailment procedures are permissible.

19. As leading electricity market economists have observed, ''in an electricity network, power flows along parallel paths dictated by physical laws rather than the contract path, creating widespread externalities whose complexity grows with network size.'' [32] Without ''an appropriate mechanism to allocate transmission capacity'' according to true flow, market participants ''are unlikely to take into consideration the effects of power flows that diverge from the contract path.'' [33] Despite the efficiencies of a flow-based method, however, the Reliability Standards continue to permit entities to choose either a path-based or a flow-based method of transmission method,[34] with most entities in the Western

[23] *See* Post-Conference Comments of American Electric Power, Docket No. AD21–13, at 8 (filed Sept. 27, 2021) (arguing that increased interregional transfer capability is ''an important component of meeting the challenges'' extreme weather poses for the system); Post-Conference Comments of Midcontinent Independent System Operator Inc., Docket No. AD21–13, at 23 (filed Sept. 27, 2021) (finding interregional transfer capacity improves the resilience of the power system); Comments of Americans for a Clean Energy Grid, Docket No. AD21–11 (filed Feb. 22, 2022), Attachment 1: Grid Strategies LLC, *Fleetwide Failures: How Interregional Transmission Tends to Keep the Lights On When There is a Loss of Generation* (Nov. 2021), Attachment 2: Grid Strategies LLC, *Transmission Makes the Power System Resilient to Extreme Weather* (July 2021), Attachment 3: Grid Strategies, LLC, *The One-Year Anniversary of Winter Storm Uri, Lessons learned and the Continuing Need for Large-Scale Transmission* (Feb. 13, 2022), Attachment 4: General Electric International, Inc., *Potential Customer Benefits of Interregional Transmission* (Nov. 29, 2021), and Attachment 5: Pfeifenberger et al., *A Roadmap to Improved Interregional Transmission Planning* (Nov. 30, 2021); Initial Comments of PJM Interconnection, L.L.C., Docket No. RM21–17, at 72–73 (filed Oct. 12, 2021) (''Greater interregional transfer capability has a significant reliability benefit for both adjoining regions as demonstrated . . . by the February 2021 Cold Snap and the 2014 Polar Vortex.'') (emphasis omitted).

[24] Pfeifenberger et al., *A Roadmap to Improved Interregional Transmission Planning* (Nov. 30, 2021) at iii, available at *https://www.brattle.com/wp-content/uploads/2021/11/A-Roadmap-to-Improved-Interregional-Transmission-Planning_V4.pdf; see also id.* at 2, Table 1, Summary of Select Recent Interregional Transmission Studies.

[25] Post-Conference Comments of Eversource Energy, Docket No. AD21–13, at 6–7 (filed Sept. 27, 2021).

[26] *See* Pfeifenberger et al. at 4–5 (summarizing barriers to interregional transmission planning and development).

[27] *See, e.g.,* Post-Conference Comments of PJM Interconnection, L.L.C., Docket No. AD21–13, at 19–20 (filed Apr. 15, 2021) (noting that a ''national standard or recommended planning driver for bi-directional transfer capability'' would facilitate ''interregional coordination'').

[28] Post-Conference Comments of American Electric Power, Docket No. AD21–13, at 10 (filed Sept. 27, 2021).

[29] *Id.* at 9–10.

[30] *Id.* at 9.

[31] *Id.*

[32] Chao et al., *Flow-based Transmission Rights and Congestion Management,* Electricity Journal at 39 (2000), available at *https://oren.ieor.berkeley.edu/pubs/flowbase.pdf.*

[33] *Id.*

[34] NERC Reliability Standard MOD–29 sets forth requirements for path-based transmission management, while Reliability Standard MOD–30 sets forth the requirements for a flow-based method.

Interconnection continuing to use the less efficient path-based method.[35]

20. Arizona Public Service and Public Service Company of Colorado argue that ''the path based approach results in less efficient transmission system use and could hamper the contracting and delivery of capacity resources across the Western Interconnection.'' [36] By contrast, ''a flow-based methodology, through its more realistic assessment of impacts to the entirety of the transmission system, in general enables greater utilization of the system as a whole.'' [37] As the West faces increased frequency and duration of extreme weather events, achieving maximum reliability value from all existing infrastructure is imperative.[38] This raises the question whether the Reliability Standards should require all applicable entities to transition to a flow-based methodology.

21. Beyond ensuring that transmission capacity is measured and scheduled in a manner that better matches the reality of the system, the Commission should explore complementary action to improve the ability of non-RTO system operators to provide transmission service when the grid is constrained. Transmission Loading Relief (TLR) procedures and Qualified Path Unscheduled Flow Relief (USF) procedures, the default methods of managing transmission congestion between balancing areas outside of RTO/ISO markets, are blunt instruments that in some cases fail to facilitate power transfers that would aid system reliability during extreme weather, and in other cases impose higher overall costs than appropriate redispatch of generation. As MISO highlights in its post-technical conference comments in Docket No. AD21–13, TLR fails to ''assure reliable service'' because it ''reli[es] on curtailment of interchange transactions.'' [39] TLR and USF procedures curtail transactions in a pre-set priority order, without locational marginal pricing or another adequate mechanism to guide them toward redispatching generation to facilitate optimal transmission flows. By contrast, economic ''[r]edispatch offers a way, in the vast majority of circumstances, to ensure that all transactions continue to be served despite transmission congestion.'' [40] RTO and ISOs generally utilize TLRs to mitigate an overload only where they have ''exhausted all other means available, short of load shedding.'' [41]

22. While the existing pro-forma Open Access Transmission Tariff (OATT) currently permits a transmission provider to use redispatch to maintain reliability during transmission constraints,[42] David Patton of Potomac Economics, the independent market monitor for NYISO, MISO, ISO–NE, and ERCOT, testified at the extreme weather technical conference that he was ''unaware in non-market areas of any redispatch that's actually being provided in order to supply transmission service.'' [43] The Commission should investigate how it may be able to facilitate economic redispatch in non-RTOs and reduce usage of TLRs and USFs in these areas. I am not aware of any systematic examination of the magnitude of potential benefits to improved coordination practices, but they are likely significant. During winter storm Uri, sophisticated RTO transmission scheduling practices facilitated the flow of between 10,000 and 14,000 MW from PJM to support operations in MISO and beyond.[44] Yet the use of such practices is not universal. TLRs were invoked on average over 200 times per year in the Eastern Interconnection across the past four years.[45] Public data for USFs, used across the Western Interconnection where economic redispatch is less prevalent, is not available.

23. I encourage non-RTO system operators to take action to improve their transmission scheduling practices, to highlight for the Commission challenges that they face in doing so, and to identify potential solutions to those challenges. Absent voluntary improvements by non-RTO system operators, I believe it would be appropriate for the Commission to consider requiring changes to the *pro forma* OATT to mandate transmission scheduling improvements. As MISO argues, ''greater grid connectedness that has developed since Order No. 890, emerging reliability needs not met by the status quo, including the TLR process, and the inflexibility of the TLR process in responding to extreme weather . . . have potentially created conditions that may make the lack of reliability redispatch to bordering utilities potentially unjust and unreasonable.'' [46]

24. While some commenters endorsed the general idea of improving transmission scheduling practices,[47] MISO was the only entity to provide detailed recommendations and factual support for doing so.[48] MISO provides several suggestions to the Commission, including (1) encouraging seams agreements that require non-RTOs/ISOs to compensate RTOs/ISOs for redispatch provided through market flows and for RTOs/ISOs to compensate non-RTOs/ISOs for reliability redispatch, when the market flows or the reliability redispatch are the more economical solution to a congestion problem at their seam, (2) allowing an RTO/ISO to file a presumptively just and reasonable unexecuted joint operating agreement or other agreement incorporating such redispatch provisions in cases where an RTO/ISO cannot reach agreement with a neighboring non-RTO/ISO transmission provider on joint redispatch,[49] (3) clarifying that the reliability redispatch provided under OATT section 33.2 is

[35] *See* Joint Comments of Arizona Public Service Company and Public Service Company of Colorado, Docket No. AD21–14, at 5–6 (filed Jan. 31, 2022).

[36] *Id.* at 5.

[37] *Id.* at 6.

[38] *See* Technical Conference Tr., June 24, 2021, Docket No. AD21–14–000, at 301:14 (Chairman Glick: ''I'm wondering if there are things we can do in the near term . . . that would help facilitate and improve [the] resource adequacy situation or at least improve [the] reliability situation.''); 307:2 (Amanda Ormond, in response: ''I want to just talk about efficiency of the existing transmission system because we certainly need to get more out of what we have, and Alice Jackson from [X]cel mentioned the flow-based [methodology] as you did. I think that's really important that we move to a flow[-based methodology] because [that would facilitate] know[ing] more about what's on the system where.'').

[39] Post-Conference Comments of Midcontinent Independent System Operator, Docket No. AD21–13, at 10 (filed Sept. 27, 2021).

[40] *Id.*

[41] *See, e.g.,* PJM Manual 37, Reliability Coordination § 4.1; Southwest Power Pool, *Congestion Management & Communication Processes,* 5, 12–13 (2013).

[42] *See pro forma* OATT § 33.2 (providing that network and native load resources will be redispatched without regard to ownership on a least cost basis to provide the amount of congestion relief assigned to all network and native load customers, and that the costs of such redispatch will be allocated on a load ratio share basis).

[43] *See* Technical Conference Tr., June 2, 2021, Docket No. AD21–13–000, at 67:21–23 (filed July 22, 2021).

[44] *See* Technical Conference Tr., Docket No. AD21–13, at 64:5–7 (Renuka Chatterjee) (filed July 22, 2021) (stating that PJM sent 10,000 to 14,000 MW to MISO and areas west of MISO during the February event).

[45] *See* NERC, TLR Logs, available at *https://www.nerc.com/pa/rrm/TLR/Pages/TLR-Logs.aspx* (last accessed June 14, 2022).

[46] Post-Conference Comments of Midcontinent Independent System Operator, Docket No. AD21–13, at 11 (filed Sept. 27, 2021).

[47] *See, e.g.,* Post-Conference Comments of Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, and Union of Concerned Scientists, Docket No. AD21–13, at 13 (filed Sept. 27, 2017) (arguing that improved coordination of exports and imports between RTOs/ISOs and non-RTO/ISO regions will enhance system resilience); Post-Conference Comments of the Michigan Public Service Commission, Docket No. AD21–13, at 10 (filed Sept. 24, 2021) (strongly supporting improved coordination and management at market seams).

[48] *See* Post-Conference Comments of Midcontinent Independent System Operator, Docket No. AD21–13, at 10 (filed Sept. 27, 2021).

[49] *Id.* at 9, 14–15.

available sub-hourly,[50] and (4) modifying OATT section 33.2 to permit redispatch not just by network resources of the transmission provider and its network transmission customers, but also from other generators including merchants.[51] It also more broadly recommends ''[m]odifying the *pro forma* OATT to require least cost dispatch of a transmission provider's resources and to require network resources to manage seam congestion'' such ''that, in addition to requiring reliability redispatch when feasible to relieve constraints within the transmission provider's own system, the transmission provider is also required to provide such service to each of its directly-connected public utility neighbors (or non-jurisdictional transmission providers that provide reliability redispatch) prior to implementing TLR procedures.'' [52]

25. These recommendations warrant serious consideration. A more robust record is necessary to examine these ideas and other potential actions to improve transmission system scheduling, management, and coordination. I encourage stakeholders to bring forth proposals to the Commission on this topic, and to provide comments and information pertinent to the ideas discussed herein. I further recommend that the Commission take action to gather more information on these issues, such as by issuing a notice of inquiry, an order directing reports from NERC and the relevant Balancing Authorities, or a combination thereof, in order to gather more information on the use of path based management as well as USFs and TLRs,[53] the potential benefits of improved transmission scheduling, management, and coordination practices, and how such improvements could be achieved. Such proceedings could gather data on the extent to which additional transmission capacity could be freed up via a transition to flowgate methodologies, and the extent to which TLR and USF procedures are unnecessarily curtailing transmission that could have otherwise been facilitated by economic redispatch. They could also examine how non-RTO market operators could implement economic redispatch in the absence of organized markets setting locational marginal prices.

3. Properly Accounting for Resource Availability During Extreme Weather

26. As many commenters stressed in response to the Commission's technical conference examining extreme weather, another pressing issue is the need to ensure that planning procedures, resource adequacy mechanisms, and reserves markets appropriately reflect the availability of resources during extreme weather events, properly accounting for common mode outages or other correlated outages.[54]

27. Resource adequacy methodologies, in particular, are an area where accurately assessing anticipated availability of resources is critical so as to ensure that applicable planning and market design achieves the desired target level of system reliability. Commenters at the extreme weather technical conference generally agreed that existing methods are outdated and do not appropriately reflect extreme weather.[55] Failure to appropriately account for resource availability jeopardizes the reliability of grid systems in extreme weather, so doing the hard work of updating these methodologies is an urgent concern.

28. NYISO and PJM have made significant strides recently in establishing processes to ensure that their capacity markets better account for correlated availability of resources,[56] but more work is needed to implement these mechanisms, and to ensure that they are fairly assessing the contributions of different resource types. While NYISO's approved proposal explicitly contemplates extending this methodology to all resource types (albeit while providing very limited detail on *how* it will do so),[57] PJM's approved method is confined to wind, solar, storage, and hybrid resources.[58] ISO–NE's external market monitor has argued that applying ELCC to thermal resources would better reflect their value.[59]

29. Further inquiry is necessary to investigate appropriate methodologies for accounting for correlated outages of resources during extreme weather, including common mode outages related to unavailable fuel supply such as gas-fired resources without fuel during winter events or hydro-electric resources experiencing drought conditions, and correlated de-rates that may occur in relation to extreme weather such as difficulty cooling thermal facilities. I urge stakeholders, grid operators, and my colleagues at the Commission to work expeditiously to address these questions and facilitate appropriate market reforms.

## C. Conclusion

30. As the Extreme Weather NOPR highlights, climate change poses a severe reliability threat to the bulk electric system. Addressing that threat is

[50] *Id.* at 11–12.

[51] *Id.* at 13.

[52] *Id.* at 11.

[53] NERC publishes data on TLR events on its website, but does not provide easily accessible information regarding the circumstances necessitating TLR usage. *See https://www.nerc.com/pa/rrm/TLR/Pages/TLR-Logs.aspx* (last accessed June 13, 2022). I am not aware of public data on the use of USFs in the Western Interconnection.

[54] *See, e.g.,* Comments of Buckeye Power, Inc., Docket No. AD21–13 at 7 (filed Apr. 15, 2021) (''[N]ew planning criteria for resource adequacy should be developed that expressly address extreme weather events and other unusual scenarios that can threaten reliability.''); Comments of Tabors Caramanis Rudkevich, Docket No. AD21–13, at 10–11, 21–24 (filed Apr. 15, 2021) (stating that seasonal resource adequacy assessments ''do not . . . adequately account for either common mode events or extreme events perceived to have a low probability,'' and advocating for ''the adoption of advanced resource adequacy methodologies and technologies that are capable of evaluation of large numbers of stochastically generated scenarios that incorporate and quantify both common mode events and the probability of extreme events''); Comments of Dominion Energy Services, Inc., Docket No. AD21–13, at 5 (filed Apr. 15, 2021) (''Constraints arising on natural gas pipelines during extreme weather may also impact the viability of operating reserves relied upon by the Regional Transmission Organizations,'' potentially leaving them ''with a false sense of security that [they have] a sufficient amount of operating reserves'' when that is not the case.); Comments of LS Power Development, LLC, Docket No. AD21–13, at 4 (filed Apr. 15, 2021) (''[P]lanning procedures must recognize and account for common mode failure among various resource classes with respect to particular weather events and require protections and redundancies to prevent catastrophic failures like those that occurred in Texas.'').

[55] *See, e.g.,* June 1, 2021 Tr. at 31:15 (Lisa Barton) (''[T]he current deterministic planning methodology that we have used today [ ] works when supply is highly dispatchable[,] when weather is predictable[, and] when peak demand is reached only a few days a year,'' and ''fundamentally needs to change'' to address current conditions); 112–113, 127–128 (Mark Lauby) (highlighting the outdated nature of 1-in-10 LOLE, and noting that it was developed on the assumption that generator forced outages are independent, an unrealistic assumption given the likelihood of common mode events caused by extreme weather); at 118 (Richard Tabors) (''Our resource adequacy metrics and planning methods systematically understate the probability, the depth, and economic health and safety costs of high impact events.'').

[56] *See PJM Interconnection, L.L.C.,* 176 FERC ¶ 61,056, at P 3 (2021) (approving a proposal by PJM to implement an ELCC methodology for crediting variable and limited duration resources); *New York Independent System Operator,* 179 FERC ¶ 61,102, at PP 75–82 (2022) (approving NYISO's proposal to implement a marginal capacity accreditation design via either ELCC or a similar Marginal Reliability Improvement technique).

[57] 179 FERC ¶ 61,102 at PP 79, 90.

[58] 176 FERC ¶ 61,056 at P 7.

[59] *See* Potomac Economics, *2020 Assessment of the ISO New England Electricity Markets,* June 2021 at 92 (''EFORd alone does not accurately describe'' the reliability value of ''intermittent renewables, energy-limited resources, long lead time or very large conventional generators, and generators that can experience a common loss of a limited fuel supply'' because ''these resource types pose the risk of correlated outage or limited availability of a large amount of capacity under peak conditions''), and 84 (arguing that the availability of these resource types is overestimated in GE–MARS, ISO–NE's resource adequacy model).

a multi-faceted challenge posing complex issues for which there is no single answer. However, if implemented in a comprehensive and cost-effective manner, today's NOPR promises to be an important and prudent step forward in protecting customers against the effects of extreme weather. By taking complementary actions in the future that build on this step, the Commission will continue to fulfill its responsibility of ensuring bulk electric system reliability.

For these reasons, I respectfully concur.

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Allison Clements,

*Commissioner.*

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Transmission System Planning Performance Requirements for Extreme Weather

Docket No. RM22–10–000

(Issued June 16, 2022)

PHILLIPS, Commissioner, *concurring:*

1. I concur in today's Notice of Proposed Rulemaking [1] to emphasize the critical importance of ensuring that the Bulk-Power System is prepared for extreme weather events in both the near-term and long-term. While this NOPR has the potential to reduce the threat to the reliability of the electric system, I note that we must remain vigilant as much work remains to ensure reliable delivery of power to consumers during times of stress and to resolve resilience concerns on the transmission system.

2. Climate change and extreme weather are, of course, complex issues of enormous importance to the United States. In my view, this NOPR is another step on the path to mitigating the long-term effects of extreme weather; however, I remain concerned about the grid's near-term reliability, particularly during the upcoming summer and winter seasons.[2] Still, with that in mind, I am voting in favor of issuing this NOPR because it is needed as an incremental improvement to Reliability Standard TPL–001–5.1 (Transmission System Planning Performance Requirements), which I believe currently contains a reliability gap.[3]

3. The NOPR proposes to direct NERC to modify Reliability Standard TPL–001–5.1 to require the development of benchmark planning cases based on past extreme heat and cold weather events.[4] Currently, Reliability Standard TPL–001–5.1 does not prescribe specific benchmarks, and I believe determining and using the appropriate benchmark will lead to better planning. While extreme weather can be unpredictable, applying a suitable benchmark study should lead to understanding resource availability and load shedding requirements under harsh conditions. Indeed, using benchmarks may also improve interregional coordination when load shedding and cascading outages occur.[5]

4. The NOPR also proposes to direct NERC to modify Reliability Standard TPL–001–5.1 to require corrective action plans when performance requirements for extreme heat and cold weather events are not met.[6] Currently, the reliability standards require that responsible entities evaluate possible actions to reduce the likelihood or mitigate the consequences of such events. These entities, however, are not obligated to take corrective actions to ensure such failures do not happen again.[7] I believe this NOPR rightly identifies this gap and assures that transmission planners rigorously address uncertainties surrounding extreme weather events in the planning process.

5. Looking forward, and beyond the important charge we have proposed here, I believe the Commission should next consider further interregional reliability planning reforms. When we issued a NOPR on regional transmission planning and cost allocation in April, I said in my concurrence:

As we continue to examine those issues, I urge the Commission to act expeditiously to propose interregional reliability planning reforms. Looking beyond regional boundaries is important so that cost-efficient regional and interregional projects can be considered and studied together. We should consider whether neighboring regions should adopt common planning assumptions and methods that allow for region-specific inputs. Additionally, I believe we must consider whether to adopt a requirement for a minimum amount of interregional transfer capacity to protect against shortfalls, especially during extreme weather events.[8]

I note we will continue to develop the record in our proceeding on regional transmission planning and cost allocation, and in response to today's NOPR. We should examine these and other records closely to determine the best course of further action on this ripe issue.

6. The regional nature of extreme weather highlights the difficulties facing our industry in addressing highly variable risks. The challenges facing California are very different from the challenges facing Texas. I believe a minimum transfer capability requirement is needed, because enhanced transfer capability may be the best way to take advantage of the diversity of energy sources and the many ways in which we can support the grid. Order No. 1000 was intended to encourage more interregional planning and development,[9] but, simply put, interregional projects are not being constructed,[10] and transfer capacity in

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[1] *Transmission System Planning Performance Requirements for Extreme Weather,* 179 FERC ¶ 61,195 (2022) (NOPR).

[2] On August 24, 2021, the Commission approved revised Reliability Standards to address certain reliability risks posed by extreme cold weather. *Cold Weather Reliability Standards,* 176 FERC ¶ 61,119, at P 1 (2021).

[3] To its credit, in the wake of Winter Storm Uri, the North Electric Reliability Corporation (NERC) issued a level 2 NERC Alert to industry on cold weather preparations for extreme weather events, which acknowledged the reliability risks associated with more frequent extreme weather conditions. NERC, *Alert R–2021–08–18–01 Extreme Cold Weather Events* (Aug. 18, 2021) (''The recent extreme cold weather events across large portions of North America have highlighted the need to assess current operating practices and identify some recommended improvements, so that system operations personnel are better prepared to address these challenges. The events have caused major interruptions to resources, transmission paths and ultimately, end-use customers.'').

[4] NOPR at PP 51–56.

[5] *See infra* at PP 6–8.

[6] NOPR at PP 6, 83.

[7] *Id.* at P 83 (''[P]lanning coordinators and transmission planners are required to evaluate possible actions to reduce the likelihood or mitigate the consequences of extreme events but are not obligated to developed corrective action plans. Specifically, if such events are found to cause cascading outages, they need only be evaluated for possible actions designed to reduce their likelihood or mitigate their consequences and adverse impacts [citation removed]. Accordingly, because of their potential severity, we believe that extreme heat and cold weather events should require evaluation and the development and implementation of corrective action plans to help protect against system instability, uncontrolled separation, or cascading failures as a result of a sudden disturbance or unanticipated failure of system elements.'').

[8] *Building for the Future through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,* 179 FERC ¶ 61,028 (2022) (Phillips, Comm'r, concurring, at P 7).

[9] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g,* Order No. 1000–A, 139 FERC ¶ 61,132 (2012), *order on reh'g and clarification,* Order No. 1000–B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. D.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014).

[10] *See* Americans for a Clean Energy Grid, *Planning for the Future: FERC's Opportunity to Spur More Cost-Effective Transmission Infrastructure, https://cleanenergygrid.org/wp-content/uploads/2021/01/ACEG_Planning-for-the-*

effect has been limited. Many commenters also point out the importance of adopting a minimum level of interregional transfer capability.[11]

7. Indeed, Winter Storm Uri highlighted the need for establishing a minimum level of interregional transfer capability. Almost half of the Electric Reliability Council of Texas (ERCOT) was forced out during the storm, which prompted cascading outages in Texas.[12] The Midcontinent Independent System Operator, Inc. (MISO) and the Southwest Power Pool (SPP) also experienced generation loss during the winter storm, but were able to request assistance from each other and from PJM Interconnection, L.L.C. (PJM) through their transmission interconnections.[13] As such, SPP maintained service for most of its load, except for a small portion of its customers over two of its areas.[14] Conversely, ERCOT was unable to avail itself of sufficient mutual assistance during Uri because of its limited transfer capabilities.[15] Therefore, I believe it is important that we consider proposing a minimum level of interregional capacity to aid in times of severe stress. I urge stakeholders to comment on the steps the Commission can take to facilitate a minimum level of interregional transfer capability, and whether there are ways to support existing interregional coordination methods.

8. I also encourage stakeholders to comment on whether the Commission should require revisions to RTO/ISO generation and transmission outage scheduling practices. Planned generation and transmission outages are critical for facilitating needed equipment maintenance. Failure to perform such maintenance in a timely fashion can lead to increased risks of failure of such facilities, including the potential for unscheduled, forced outages—outages that could negatively affect the reliability of the grid. Therefore, my preference is to develop a further record regarding whether RTOs/ISOs should have wider discretion to coordinate planned outages to make sure all resources and equipment are available at the time of a reliability event, which sometimes can be incredibly hard to predict.

9. By way of example, not all RTOs/ISOs are able to delay or cancel planned outages for economic reasons, even though the estimated economic impact of the outage could signal a vulnerability to a reliability issue if there is another outage in the same area.[16] Given our growing need to rely on these facilities during the shoulder months, I believe that planned generation and transmission outages could increasingly be a driver of reliability concerns, especially should an extreme weather event occur. Therefore, I urge stakeholders to comment on the provisions in RTO/ISO tariffs regarding the authority to recall or cancel planned outages, and whether those practices ensure that all possible resources can be called upon to assist during extreme weather events. I am also interested in whether rules requiring replacement capacity in the event of extended outages would address these scheduling issues.

10. Further, I would support a FERC/NERC joint effort to consult with state and local regulators on these complex issues, especially as more states are taking increasingly ambitious actions throughout the country to stem the effects of climate change and extreme weather. I believe it is beneficial to increase coordination with states and state regulators because climate change and extreme weather issues raise difficult challenges that will be novel to all relevant jurisdictions.[17] State and federal regulators must endeavor to pursue reliability solutions that are in accord with one another. In addition, while state and local action is vital to preventing the worst effects of extreme weather, federal leadership is also critical. State regulators may not have visibility into how the Bulk-Power System may respond to reliability events, so greater coordination with federal authorities would allow them to answer local stakeholders as to how the entire system is performing country-wide.[18] I encourage stakeholders to comment on whether and to what extent FERC, NERC, and state and local regulators can better coordinate on extreme weather reliability matters.

11. Finally, I note that this NOPR is not set in stone and only asks for comments in response to proposed directives to NERC. There is much good in this NOPR, and there is much more

*Future1.pdf* (''For all of the best efforts of the Commission and regional planning authorities, the current set of transmission regulations have resulted in inadequate levels of infrastructure that have burdened the interconnection process with the task of planning new network facilities—a task that should instead take place in the planning process. Further, existing regulations have created a system that disproportionally yields projects that address only local needs, that address reliability without more broadly assessing other benefits, or that simply replace old retiring transmission assets with the same type and design despite the potential for larger projects to more cost effectively meet the same needs.'').

[11] *See, e.g.,* AEP Post-Conference Comments, Docket No. AD21–13–000, at 8–12 (filed Sept. 27, 2021) (''The need for regions to assist each other in extreme weather events has become more frequent over the past decade, thus highlighting the value, and limitations, of current interregional transmission capabilities.''); Michigan Public Service Commission Post-Conference Comments, Docket No. AD21–13–000, at 12–13 (filed Sept. 24, 2021) (stating that it supports improving existing interregional coordination methods, such as a target level of interregional transfer capacity a target level of regional transfer capacity, to prepare for extreme weather events); PJM Interconnection, L.LC. Post-Conference Comments, Docket No. AD21–13–000, at 19–20 (filed Sept. 27, 2021) (stating that a DOE National Labs study can identify transfer metrics to evaluate an appropriate level of import/export capability by balancing authority in terms of percentage of load); Public Interest Organizations Post-Conference Comments, Docket No. AD21–13–000, at 22–23 (filed Sept. 27, 2021) (discussing different methodologies for achieving a minimum level of interregional transfer capacity).

[12] *See* Testimony of James Robb, NERC President and Chief Executive Officer, before the Subcommittee on Oversight and Investigations Committee on Energy and Commerce, United States House of Representatives, ''Power Struggle: Examining the 2021 Texas Grid Failure,'' Mar. 24, 2021, *https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony_Robb_OI_2021.03.24.pdf.*

[13] FERC–NERC Regional Entity Staff Report, *The February 2021 Cold Weather Outages in Texas, and the South-Central United States,* at 14, 66, 127, 141, 167 (Nov. 2021) (2021 Cold Weather Report).

[14] 2021 Cold Weather Report at 10–11.

[15] 2021 Cold Weather Report at 183 (''ERCOT, unlike MISO and SPP, . . . did not have the ability to import many thousands of MW from the Eastern Interconnection, and thus needed to shed the greatest quantity of firm load to balance electricity demands with the generating units that were able to remain online.'').

[16] *See* Eversource Post-Conference Comments, Docket No. AD21–13–000, at 5 (filed Sept. 27, 2021) (''As noted by the Commission, ISO–NE already has the ability to deny outages based on economic impact.''); *but see* MISO Post-Conference Comments, Docket No. AD21–13–000, at 19 (filed Sept. 27, 2021) (explaining that when reliability concerns are present, MISO works with generators to explore rescheduling outages).

[17] *See, e.g.,* PJM Pre-Conference Comments, Docket No. AD21–13–000, at 9 (filed Apr. 15, 2021) (explaining that coordination with states on climate change and extreme weather events is of utmost importance in the role of retail regulators and other federal agencies); Speaker Materials of Devin Hartman, R Street Institute, at the Technical Conference to Discuss Climate Change, Extreme Weather and Electric System Reliability, Docket No. AD21–13–000, at 1 (filed June 3, 2021) (discussing many reliability deficiencies, which include disjointed state-federal coordination and siloed reliability institutions); *see also* Motion to Intervene and Comments of the National Association of Regulatory Utility Commissioners, Docket No. AD21–13–000, at 2 (filed Apr. 15, 2021) (''The Commission most certainly should confer with the states . . . where climate change and extreme weather events may implicate both federal and state issues.'').

[18] *See* Technical Conference Tr., June 2, 2021, Docket No. AD21–13–000, at 130–131:1–25 (Letha Tawney) (''I would ask FERC to think of the state regulators in our role, in our states, as sort of the face of electricity and natural gas . . . [W]e don't have good visibility into how the bulk system is going to respond . . . And without good visibility into how the transmission system is adopting to these risks, [then we are] in a difficult position with our local stakeholders.'').

work to be done.[19] I look forward to examining all the comments as we seek to issue a final rule around these topics.

For these reasons, I respectfully concur.

Willie L. Phillips,
*Commissioner.*

[FR Doc. 2022–13471 Filed 6–24–22; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2021–0944; FRL–9174–01–R3]**

## Air Plan Approval; Delaware; Control of Volatile Organic Compounds Emissions From Solvent Cleaning and Drying

**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 Delaware. This revision pertains to the reduction of volatile organic compounds (VOC) emissions from cold solvent cleaning operations. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before July 27, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2021–0944 at *https://www.regulations.gov,* or via email to *gordon.mike@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Mallory Moser, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2030. Ms. Moser can also be reached via electronic mail at *Moser.Mallory@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On October 13, 2021, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP which comprises revisions to Title 7 of Delaware's Administrative Code (7 DE Admin. Code) 1124 Section 33.0—Solvent Cleaning and Drying. The revision to 7 DE Admin. Code 1124 Section 33.0 will reduce emissions of VOCs from cold solvent cleaning operations, thus reducing the formation of ground-level ozone.

### I. Background

The revision consists of an amendment to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions, Section 33—Solvent Cleaning and Drying. Specifically, the amendment updates the solvent cleaning control requirements based upon the 2012 Ozone Transport Commission (OTC) Model Rule.

The OTC, of which Delaware is a member, is an organization established by Congress under the CAA. Among other things, the OTC develops model rules for the member states to use to reduce the emissions of ground level ozone precursors. In 2001, the OTC released the 2001 Model Rule for Solvent Cleaning (2001 Model Rule). The 2001 Model Rule is the basis for the version of 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions, Section 33—Solvent Cleaning and Drying currently in the approved Delaware SIP.[1] After a release of the control techniques guideline (CTG): Industrial Cleaning Solvents by the EPA in 2006, proposing new VOC limits for solvent cleaning, the OTC convened a group of experts that suggested a more stringent model rule than what is provided in the CTG and the 2001 Model Rule. The OTC then developed the 2012 Model Rule for Solvent Degreasing (2012 Model Rule). The provisions set forth in the 2012 Model Rule are more stringent than those currently included in the Delaware SIP and form the basis of the Delaware SIP revision we are proposing to approve in this rulemaking. This revision eliminates an existing exemption by adding provisions that apply to owners or operators of a solvent cleaning machine that uses any volume of solvent containing VOC. This revision also reduces the solvent VOC concentration from 100 percent to 25 grams per liter of non-VOC solution for most applications.

Certain areas of Delaware are designated as nonattainment for ground-level ozone. Ground-level ozone is formed through the reaction of VOCs and other compounds in the air in the presence of sunlight. High levels of ground-level ozone can cause or worsen difficulty in breathing, asthma and other serious respiratory problems. In addition to improving public health and the environment, decreased emissions of VOCs, and therefore subsequently ground-level ozone, will contribute to the attainment of the ozone national ambient air quality standard (NAAQS).

By removing an applicability exemption and decreasing the allowable solvent VOC concentration, the 2012 Model Rule is expected to decrease emissions of VOCs. This reduction of VOC emissions from solvent cleaning operations will further reduce the formation of ground-ozone. Therefore, Delaware is amending their SIP to implement the updated 2012 Model Rule.

### II. Summary of SIP Revision and EPA Analysis

This SIP revision, submitted by the State of Delaware on October 13, 2021, amends 7 DE Admin. Code 1124 section 33.0, Solvent Cleaning and Drying. The amendments to section 33.1 (Applicability) add provisions that apply to owners or operators of a solvent cleaning machine that uses any volume of solvent containing VOC. Therefore, the amendments eliminate the previous exemption for cold cleaning machines containing less than one liter of solvent and 5% by weight VOC. Section 33.1 also clarifies that it does not cover solvent cleaning machines that use the following hazardous air pollutants (HAPs): methylene chloride, perchloroethylene or 1,1,1-trichloroethane. Additionally,

[19] For instance, Commissioner Clements is right in pointing out that we must also take a close look at existing resource adequacy mechanisms and ancillary service markets. *See* NOPR (Clements, comm'r, concurring) at PP 26–27.

[1] See 67 FR 70315 (November 22, 2002).

this Section adds language that clarifies the provisions do not separate VOCs into categories such as a low-vapor pressure chemical compound (LVP–VOC) or mixture.

The amendments to section 33.2 (Definitions): (1) add clarity by defining the following terms that had been used in the prior version of the regulation but which had not previously been defined: Batch cold cleaning machine, Freeboard refrigeration device, Idling mode, In-line cold cleaning machine, Lip exhaust and Solvent; and (2) modify definitions for the following: Batch vapor cleaning machine, Cold cleaning machine, Freeboard height and Remote reservoir cold cleaning machine.

Section 33.3 (Standards for batch cold cleaning machines) amendments allow cold cleaning machines to be heated below boiling and require the cold cleaning machines must remain leak free. Cold cleaning machines that are heated must have a temperature control device that will avoid overheating and prevent boiling of the cleaning solution. The amendments to section 33.3 are more stringent than the current SIP because they reduce the solvent VOC concentration from 100% to 25 grams of VOC per liter solution for most applications. Limited types of applications may use 150 grams VOC per liter of solution. A VOC content greater than 25 grams of VOC per liter, or 150 grams of VOC per liter for certain application types, may be used only with a VOC capture and control device that would control the VOC air emissions to no more than would be experienced if the cleaning solution were VOC compliant in absence of the capture and control device. These reductions in the allowed solvent VOC concentration will further reduce emissions of VOCs.

Similarly, Section 33.5 (Standards for in-line cleaning machines) reduces the VOC content concentration for cleaning solution, from 100% to no more than 25 grams of VOC per liter for cleaning standard parts and no more than 150 grams VOC for printed circuit boards. The revisions to section 33.5 are more stringent than the current SIP and will further reduce emissions of VOCs.

The amendment adds clarifying language which maintains there are no existing VOC content restrictions for the cleaning solvent used in the following: batch vapor cleaning machines, vapor in-line cleaning machines, machines not having a solvent/air interface, or vapor in-line cleaning machines under the alternative standard.

Section 33.8 (Monitoring) adds provisions for the testing of the temperature control system.

Amendments to section 33.9 (Recordkeeping) require the owner or operator of a cold cleaning machine provide appropriate documentation that may be used for compliance. Section 33.10 (Reporting) adds the requirement of specific documentation when obtaining any solvent containing VOC for use in a cold cleaning machine. Section 33.11 (Test Methods) requires the VOC content of materials subject to these provisions must be determined by EPA Reference Method 24, SCAQMD Method 304, or SCAQMD Method 313. In addition, the amendments include other non-substantive administrative wording edits and corrections.

## III. Proposed Action

Delaware's proposed SIP revisions to 40 CFR 52.420(c), which incorporate amendments made to 7 DE Admin. Code 1124 Section 33.0, will lower VOC concentration in solvent cleaning machines operated in Delaware and aid in reducing VOC emissions. These emissions are a cause of ground level ozone and reducing them will help Delaware and the surroundings areas to attain the ozone NAAQS. EPA has determined that this SIP revision meets the requirements of the CAA. Therefore, EPA is proposing to approve the October 13, 2021, SIP revision which sets limits on the VOC concentration of solvents that apply to all owners or operators of a solvent cleaning machines in Delaware. EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

## IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Delaware's Solvent Cleaning and Drying requirements as described in 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions, see sections II and III of this document. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

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

Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed rule regarding VOC content used during solvent cleaning and drying in Delaware, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not

impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Environmental protection, Ozone, Volatile organic compounds.

**Adam Ortiz,**

*Regional Administrator, Region III.*

[FR Doc. 2022–13661 Filed 6–24–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2021–0855; FRL–8941–01–R3]**

## Air Plan Approval; Virginia; Negative Declaration Certification for the 2015 Ozone National Ambient Air Quality Standard for the 2016 Oil and Natural Gas Control Techniques Guidelines

**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 Commonwealth of Virginia. This revision provides Virginia's determination for the 2015 Ozone national ambient air quality standards (NAAQS), via a negative declaration, that there are no sources within the Northern Virginia volatile organic compound (VOC) Emissions Control Area subject to EPA's 2016 Oil and Natural Gas control techniques guidelines (2016 Oil and Gas CTG). The negative declaration covers only the 2016 Oil and Gas CTG and asserts that there are no sources subject to this CTG located in the Northern Virginia VOC Emissions Control Area. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before July 27, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2021–0855 at *https://www.regulations.gov,* or via email to *gordon.mike@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Om P. Devkota, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2172. Mr. Devkota can also be reached via electronic mail at *Devkota.om@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On August 9, 2021, the Virginia Department of Environmental Quality (VADEQ) submitted the negative declaration for the 2016 Oil and Gas CTG for the 2015 ozone NAAQS as a revision to the Virginia SIP.

### I. Background

The CAA regulates emissions of nitrogen oxides ($NO_X$) and VOCs to prevent photochemical reactions that result in ozone formation. Reasonably available control technology (RACT) is a strategy for reducing $NO_X$ and VOC emissions from stationary sources within areas not meeting the NAAQS for ozone. EPA has consistently defined ''RACT'' as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include RACT, including RACT for existing sources of emissions. Section 182(b)(2)(A) of the CAA requires that for areas designated nonattainment for an ozone NAAQS and classified as moderate, states must revise their SIP to include provisions to implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. Section 182(b)(2)(B) requires the same for CTGs issued before November 15, 1990. CAA section 182(c) through (e) applies this requirement to states with areas designated nonattainment for an ozone NAAQS classified as serious, severe, and extreme.

The CAA also imposes the same requirement on states in Ozone Transport Regions (OTR). Specifically, CAA section 184(b) provides that states in an OTR must revise their SIP to implement RACT with respect to all sources of VOC in the OTR covered by a CTG document issued before or after November 15, 1990, even for areas designated attainment within the OTR. CAA section 184(a) establishes a single OTR comprised of 11 eastern states and the Consolidated Metropolitan Statistical Area (CMSA) that includes the District of Columbia. Portions of Northern Virginia are in the CMSA and therefore the OTR. The rest of Virginia is not in the OTR. The Virginia portion of the OTR includes the following areas: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City. Collectively, these areas will be referred to as the ''Northern Virginia VOC Emissions Control Area'' or the ''Northern Virginia area.'' Finally, Section 182(f) requires that plan provisions required under subpart 4 of part D of title I of the CAA, which includes sections 182 through 184, for major sources of VOC shall also apply to major stationary sources of oxides of nitrogen in ozone nonattainment areas.

CTGs and alternative control techniques (ACTs) form important components of the guidance that EPA provides to states for making RACT determinations.[1] CTGs are used to presumptively define VOC RACT for applicable source categories. States subject to RACT requirements are required to adopt controls that are at least as stringent as those found in the CTG either by adopting regulations or issuing single-source orders or permits that outline what the source is required to do to meet RACT. On October 27, 2016 (81 FR 74798), EPA published in the **Federal Register** the ''Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry.'' This 2016 Oil and Gas CTG provided information to state, local, and tribal air agencies to assist in determining RACT

[1] A complete list of EPA-issued CTGs and ACTs with links to each CTG or ACT can be found at *https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques.*

for VOC emissions from select oil and natural gas industry emission sources. The 2016 Oil and Gas CTG replaces an earlier 1983 CTG entitled ''Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants. December 1983.'' EPA–450/3–83–007 (1983 CTG) 49 FR 4432 (February 6, 1984). 2016 Oil and Gas CTG, p. 8–1.

On March 6, 2015 (80 FR 12263), EPA issued a final rule entitled ''Implementation of the 2008 national ambient air quality standards for Ozone: State Implementation Plan Requirements'' (2008 Ozone Implementation Rule).[2] In the preamble to the final rule, EPA makes clear that if there are no sources covered by a specific CTG source category located in an ozone nonattainment area or an area in the OTR, the state must submit a negative declaration for that CTG. See 80 FR 12263, 12278. On December 6, 2018 (83 FR 62998), EPA issued a final rule entitled ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements'' (2015 Ozone Implementation Rule).[3] In the 2015 Ozone Implementation Rule, EPA retained without significant revision the majority of existing implementing regulations associated with the 2008 ozone NAAQS for the purposes of implementing the 2015 ozone NAAQS. See 83 FR 62998. If no source for a specified CTG exists in a state, the state must submit, as a SIP revision, a negative declaration documenting this fact. On August 9, 2021, VADEQ submitted for approval into the Virginia SIP a negative declaration for the 2016 CTG for the Oil and Natural Gas Industry for the 2015 ozone standards.

## II. Summary of SIP Revision and EPA Analysis

The 2016 Oil and Gas CTG divides the industry into four segments: production, processing, transmission and storage, and distribution. The transmission and storage sector includes compressor stations, pipelines and storage facilities. The distribution sector is the final step in delivering natural gas to customers and includes gas mains and service pipelines. See CTG p.3–1; see also CTG pp.3–1 through 3–3 for a brief explanation of each segment. However, not all four segments of the industry are subject to the requirements of the CTG. The CTG covers select sources of VOC emissions in the onshore production and processing segments of the oil and natural gas industry (*i.e.,* pneumatic controllers, pneumatic pumps, compressors, equipment leaks, fugitive emissions) and storage vessel VOC emissions in all segments (except distribution) of the oil and natural gas industry. These sources were selected for RACT recommendations because current information indicates that they are significant sources of VOC emissions. CTG p.3–5. A summary of the oil and natural gas emission sources and recommended RACT for those sources is provided in Table 1 of the CTG document, on pages 3–6 through 3–8.

According to Virginia's August 9, 2021 submittal, VADEQ conducted a review of potential sources subject to the 2016 Oil and Gas CTG and found that there are no sources located in the Northern Virginia area subject to the terms of this CTG for purposes of the 2015 ozone NAAQS. VADEQ used several methods to determine whether there were any sources subject to this CTG in the Northern Virginia area. VADEQ consulted the Department of Mines, Minerals, and Energy (DMME) Division of Gas and Oil (DGO) database, which showed that there are no active wells in the Northern Virginia area. No drilling permits have been issued in the area since 1991. VADEQ also consulted the Comprehensive Environmental Data System (CEDS), which is the air regulatory registration database for the jurisdictions comprising the Northern Virginia VOC Emissions Control Area (*i.e.,* the Northern Virginia area). As explained in the SIP submission, facilities must register in this database all units subject to any applicable regulation in the Regulations for the Control and Abatement of Air Pollution, any facilities with the potential to emit (PTE) at least 25 tons per year (tpy) of VOC or 40 tpy of $NO_X$, and any facility making a change with a PTE of at least 10 tpy VOC or $NO_X$. The CEDS also has registration and reporting requirements for facilities emitting much lower levels of VOC. After consulting CEDS, VADEQ found that no natural gas processing or storage facilities are located in the Northern Virginia area. The details concerning VADEQ's analysis are on page 2 of Virginia's submittal.

Notwithstanding VADEQ's finding that there are no VOC sources in the Northern Virginia area subjected to RACT by the 2016 Oil and Gas CTG, VADEQ identified facilities in Northern Virginia defined by the 2016 Oil and Gas CTG as part of the oil and natural gas industry. Specifically, VADEQ identified certain natural gas compressor stations in the Northern Virginia area, but determined that these are ''downstream'' of the point of custody transfer to the natural gas transmission and storage segment. That is, these compressor stations are in neither the production nor processing segment of the industry. Compressor stations located in the transmission and storage segment of the oil and gas industry are not subject to any RACT requirements specified by the 2016 Oil and Gas CTG. See CTG, p. 3–7. However, if these compressor stations meet the VOC or $NO_X$ emission thresholds to be considered major sources of VOC or $NO_X$ for a moderate ozone nonattainment area, these sources will be subject to a major source RACT determination under Section 182(b)(2)(C) of the CAA.

## III. Proposed Action

EPA's review of this material indicates that the August 9, 2021 submittal meets CAA requirements and that VADEQ's analysis adequately demonstrates that there are no affected sources located in the Northern Virginia area subject to the 2016 Oil and Gas CTG source categories. Therefore, EPA is proposing to approve Virginia's August 9, 2021 negative declaration SIP submittal as a revision to the Virginia SIP. EPA is soliciting public comments on Virginia's negative declaration, including the adequacy of VADEQ's search and analysis of the CTG applicability criteria. Comments concerning the adequacy of the 2016 Oil and Gas CTG itself are not germane to this action and will not be considered. Relevant comments will be considered before taking final action.

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

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the

[2] See Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards at 40 CFR 51.1100 through 51.1119.

[3] See Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards at 40 CFR 51.1300 through 51.1319.

violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.11198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.11198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

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

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

## V. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. As such, EPA's proposed approval of Virginia's SIP revision certifying the negative declaration for the 2016 Oil and Gas CTG does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

**Adam Ortiz,**

*Regional Administrator, Region III.*

[FR Doc. 2022–13660 Filed 6–24–22; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 15, 20, 27, 80, 90, 95

**[WT Docket No. 22–204; FCC 22–41; FR ID 92293]**

## Facilitating Access to Spectrum for Offshore Uses and Operations

**AGENCY:** Federal Communications Commission.

**ACTION:** Request for comment.

**SUMMARY:** This document, a Notice of inquiry (*Notice*) adopted by the Federal Communications Commission (Commission) seeks comment on whether changes to Commission's rules or policies are needed to facilitate the development of commercial and private wireless networks offshore. Recognizing that U.S. commercial and scientific endeavors may benefit from increased access to spectrum offshore, the Notice aims to gather information on offshore operation use cases and their potential. It seeks comment on the type of offshore uses that require spectrum, the appropriate spectrum bands to support offshore uses, and potential assignment mechanisms.

**DATES:** Send comments on or before July 27, 2022; and reply comments on or before August 26, 2022.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 22–204, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

*See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

*People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

**FOR FURTHER INFORMATION CONTACT:** Nellie Foosaner of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418–2925.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Inquiry in WT Docket No. 22–204, FCC 22–41 adopted on June 8, 2022, and released on June 9, 2022. The full text of this document, including all Appendices, is available for public inspection on the Commission's website at *https://www.fcc.gov/document/fcc-seeks-input-offshore-spectrum-needs-and-uses-0.*

**Ex Parte Rules**

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation.

If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

**Synopsis**

**I. Introduction**

1. With this Notice of Inquiry, we take the first steps toward facilitating offshore operations through innovative spectrum management policy. Specifically, we seek input on whether changes in our rules and policies are needed to facilitate the development of offshore commercial and private networks. This Notice of Inquiry seeks to gather information on offshore operation use cases and their potential, including, but not limited to, the type of offshore uses that require spectrum, the appropriate spectrum bands for offshore uses, and potential assignment mechanisms. We take this action to support U.S. industrial and scientific endeavors that will benefit from offshore spectrum availability, and in return benefit the public, while also protecting existing operations such as maritime and aviation safety operations.

2. We recognize that a variety of approaches may be appropriate as we consider potential paths forward, whether through industry-led voluntary sharing measures, Commission policy and guidance, or regulation where other approaches would be insufficient. With this Notice, we seek to compile a comprehensive record on the various issues that the Commission should consider, inviting broad comment from all stakeholders. We look forward to reviewing the record that develops from this Inquiry to inform us regarding next steps that the Commission may take.

**II. Background**

3. A bedrock Commission obligation is to manage and oversee the nation's radio spectrum, ''maintain[ing] the control of the United States over all [] channels of radio transmission'' and ''provid[ing] for the use of such channels, but not the ownership thereof, by persons for limited periods of time.'' 47 U.S.C. 301. To fulfill this obligation, the Commission assigns spectrum rights where there is public need for spectrum. With respect to licenses on land, we continue to meet the ever increasing demands for spectrum, and generally have done so on a band-by-band or service-by-service basis as technology advances and spectrum needs evolve. We have utilized a wide array of models for assigning spectrum rights because of a wide diversity of land-based needs. With respect to access offshore for land-based spectrum, however, existing mechanisms may not be meeting current demand.

4. The Commission's initial site-based, demand-driven, licensing paradigms that remain in effect in many bands continue to provide for narrowband spectrum access in support of industry, public safety, and backhaul. The Commission uses ongoing, demand-driven licensing in the Gulf of Mexico and in other U.S. territorial waters in the Atlantic and Pacific Oceans, including areas adjacent to the Continental United States (CONUS), Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. Where applicable, such licensing (and deployments under those licenses) require coordination with Canada and

Mexico. The majority of such site-based offshore authorizations are for Private Land Mobile Radio (PLMR) services, part 90 radiolocation services, aviation-ground services, and maritime coast stations. As of the publication of this document, there are more than 1,400 active site-based licenses issued offshore across many different radio services. In addition, our part 15 rules for unlicensed operation and our part 5 rules for experimental radio use have provided parties with additional mechanisms for accessing radio spectrum offshore.

5. When the Commission began to use geographic area licensing, it provided for spectrum access in the Gulf of Mexico only in certain spectrum bands, and our rules do not provide for geographic-based access in the remaining bands in the Gulf of Mexico and in all other offshore areas surrounding and within the United States and its territories. In the context of notice and comment rulemaking proceedings, the Commission adopted an area license for the Gulf of Mexico when there was demand demonstrated in the record and there were no technical, legal, or policy reasons prohibit it. With the exception of the Gulf of Mexico, there is not a geographic area license specifically designated for offshore use—*e.g.,* there is no market area license for water off the Atlantic or Pacific Coasts, or within the Great Lakes. We recognize that there may be offshore operations in other areas that may need access to additional spectrum and could benefit from geographic-area licensing or other assignment mechanisms aside from site-based access.

6. Offshore communications are also available or are authorized via satellite-based systems. For instance, mobile earth stations located at sea provide communications services both offshore and in international waters. These include Mobile Satellite Services (MSS) provided by such companies as Inmarsat and Iridium, as well as services provided via Earth Stations in Motion (ESIMs) by such companies as SES, Intelsat, Telesat, and ViaSat. ESIMs are increasingly used to deliver broadband to maritime vessels—including enterprise services and broadband to cruise ships. In addition, satellite-based communications currently play a significant role in providing communications to oil rigs and platforms offshore. In this inquiry, we are exploring the potential benefits of providing additional avenues for providing offshore access via terrestrial communications services. We also note that part 80 of the Commission's rules provides spectrum to vessels for maritime radio, such as Automatic Identification System (AIS) channels and other uses. This Notice does not seek comment on Maritime Radio, but rather on other offshore spectrum use cases, including additional needs of vessels.

## III. Discussion

7. This Notice of Inquiry first seeks comment on the actual demand for offshore spectrum and whether the Commission needs to facilitate spectrum usage for offshore operations. This Inquiry recognizes different spectrum rights models that could facilitate offshore operations and seeks comment on which model would best serve spectrum needs offshore. We do not intend to structure our analysis by specific offshore regions or zones. Instead, we seek more broadly to understand the extent of the demand to use offshore spectrum and more generally where that demand is concentrated. Next, we seek comment on assignment mechanisms that would best serve the Commission's goal of effective and efficient use of spectrum. We also seek comment on the potential for unlicensed use and spectrum leasing models to meet offshore spectrum needs, and on individual spectrum bands that may facilitate offshore operations. Finally, we seek comment on whether the approaches taken by other countries in making offshore spectrum available can inform our policy.

### *A. Demand for Offshore Spectrum*

8. To better guide any potential change to Commission rules or policies, we seek to understand how extensive the need is for offshore spectrum access. In light of this, we seek comment generally on the demand for offshore spectrum. We recognize that, in the past, demand was initially driven largely by the offshore oil drilling industry's need for spectrum access offshore, but we anticipate that demand may have grown among other industries as well. What kinds of offshore operations would benefit from greater access to spectrum, both now and in the future? What distance from land would those operations be conducted? Are the use cases that need offshore spectrum fixed or mobile in nature, or a combination of both? Are there commercial or private maritime or aeronautical uses in addition to those already provided for by our rules? What types of services might entities consider deploying offshore? Are there both commercial and private operations offshore that require spectrum access and, if so, how are private versus commercial operations' respective needs for offshore spectrum different? To what extent are current or anticipated satellite-based services responding to various types of demand for offshore spectrum-based services? What are the potential benefits of making spectrum available for terrestrial-based Wi-Fi or mobile networks in addition to the spectrum available as of the publication of this *Notice*?

9. We recognize that the Commission has granted several experimental licenses operating at various frequencies to facilitate scientific experimentation and exploration offshore. Descriptions of these experiments include communications, data gathering, and command and control of offshore platforms, sensors, and unmanned aerial systems for purposes of oceanography and navigation. We seek comment on how these experimental licenses might inform future offshore radio services, and in particular whether the Commission should consider adopting new offshore radio service rules to provide service and technical rules for devices used to support any of these applications.

10. Do commenters expect that spectrum demand will vary significantly by type of offshore operation or use case? How much spectrum do different types of offshore operations or uses need? How much contiguous spectrum do stakeholders anticipate needing? Are the needs localized or is the demand for communications or other services over long distances? What are the boundaries of offshore operation use cases? How far from the shore might demand for spectrum extend? Will the amount of spectrum needed for a given use or operation be static or will the amount of spectrum needed change over time? Is there a demand for wireless spectrum to provide backhaul from operations offshore? Commenters should specify the individual offshore operation, use case, or service discussed in their responses.

11. One use case that we anticipate may have various offshore spectrum needs is the construction and operation of windfarms in the Atlantic and Pacific oceans, and potentially beyond. We anticipate that such needs may include: providing wireless services to the site during construction of the windfarm; testing, daily operation, and scheduled and emergency maintenance and replacement; communications to ships and entities on shore; and communication capability among offshore operators in adjacent areas and between those operators and first responders. Is this an accurate overview

of uses for spectrum at windfarms? Are there other uses? How do these needs differ from those on offshore oil platforms, which utilize both terrestrial-based and satellite-based communications services? How much spectrum would a windfarm need to support these kinds of operations, and would the amount of spectrum vary by stage of the project?

12. Another potential use case is for communications services by vessels in coastal waters. Is there a need for additional offshore spectrum access models that would provide greater opportunities for vessels at sea to access mobile networks or connect onboard Wi-Fi networks to the internet? We recognize that there are satellite-based services currently being provided to vessels at sea. What are the potential benefits of making additional spectrum available from terrestrial-based Wi-Fi or mobile networks?

13. What other use cases exist that require offshore spectrum access that is not being provided under the existing access models? Are there other industrial or scientific research demands for offshore spectrum? We seek comment generally on other industries that might have a need for offshore spectrum. Are there offshore operations that utilities may conduct? Is there a need for telephone service to subscribers working offshore, like there is in the Gulf of Mexico? Commenters should include specific examples for industries operating offshore and uses of offshore spectrum.

14. We also seek comment on the degree to which terrestrial technologies using spectrum allocated for fixed or mobile wireless operations could supplement the demand for offshore spectrum access currently served by satellite technologies using spectrum allocated for satellite operations. Further, how does the Internet of Things (IoT) landscape affect demand for offshore spectrum? What sort of IoT technologies require additional offshore spectrum? What other relevant use cases should we consider? For example, space launch operations can involve the offshore retrieval of launch components. What are the spectrum needs for these activities and how well suited are the authorization mechanisms that are currently being used? Are there any potential impacts to satellite operations from increased offshore terrestrial operations?

15. Additionally, we seek comment on the infrastructure needed to support offshore spectrum operations. Specifically, what infrastructure is needed to support base stations, end-user equipment, fixed transmitters, beacons, and other equipment offshore? Is the infrastructure likely to be fixed/stationary, drifting in the water, airborne, or deployed in another way? What are the needs—infrastructure related or otherwise—of offshore operations that may sometimes be fixed but at other times are mobile or need to move locations over time, such as operations by the fishing industry, scientific researchers, and cruise ships?

*B. Spectrum Rights Models*

16. To the extent that there is a need for increased access to spectrum offshore, we seek comment on what kinds of spectrum rights should be conveyed to meet the demand. Possible models include shared spectrum rights, authorizations for secondary operations, and authorizations with primary rights. We seek comment generally on these approaches, or combinations thereof, including the advantages and disadvantages of each and any associated cost and benefits.

17. In advocating for or against particular spectrum rights models, we encourage commenters to consider not only the circumstances and needs of offshore operations (including incumbent operations requiring protection), but also the unique characteristics of radio transmissions over open water. For example, commenters should discuss the impact of the propagation of signals over open water on preventing harmful interference. Commenters should also discuss the use of directional antennas, including those with advanced beamforming capabilities, and the potential for these measures to increase opportunities for coexistence with incumbent operations. Similarly, commenters should consider whether the use of antenna gain patterns to reduce transmissions at high angles could reduce interference risk to incumbent aeronautical operations not otherwise protected by ground clutter or terrain.

18. *Shared Spectral Rights.* We seek comment on whether a spectrum commons approach could serve the needs of offshore spectrum. Under a spectrum commons approach, all spectrum is shared and there is no expectation of interference protection. Could a spectrum commons model, or similar shared spectral rights model, offer enough spectrum for offshore operations and enough interference protection? Why or why not? Under such an approach, would individual offshore operators or users coordinate with each other for interference protection and resolution? How could this best be enabled? For example, would a band manager or spectrum manager be needed? Are there certain types of offshore operations that could utilize a shared model, while others need primary or secondary rights? Why or why not? Commenters should discuss in detail advantages and disadvantages of a spectrum commons or similar shared spectrum rights approach for offshore operations, including the effect on incumbent operations. What spectrum bands are good candidates for shared spectrum use? What bands should not be considered on a shared basis for offshore operations? What are the costs and benefits to this approach, as opposed to primary or secondary use authorizations?

19. *Secondary Authorization.* Next, we seek comment on providing secondary spectrum rights to offshore operations. Under a secondary rights framework, the incumbent user would have primary use of the band at issue, consistent with the terms of its authorization, and the incumbent would have an expectation of protection of interference from any secondary users. Offshore operations could be granted authority to act as secondary users that cannot cause harmful interference to primary operations in the band (whether that primary user is on land or, in the case of the Gulf of Mexico or existing site-based authorizations, in the water). Would an individual authorization with secondary status model meet the needs of some offshore operations, but not others? Why or why not? How might the sufficiency of secondary use vary based on the specific use case or phase of the project at issue?

20. If a secondary rights model is appropriate, should the primary license, if on land, be modified to allow secondary use offshore? How far offshore should the modification extend? Should the Commission allow secondary use offshore by both the primary licensee on land and another user? In either instance, what would be the best mechanism to do this? Are there any other secondary use models that the Commission should consider for offshore operations? Which spectrum bands should be considered for secondary use offshore? Commenters should discuss the advantages and disadvantages of any approach proposed, and the associated costs and benefits.

21. *Primary Authorization.* Finally, we seek comment on the need for individual authorizations with primary rights for offshore operations, with the expectation of exclusive use and protection from interference from other users. Do certain offshore operations require primary spectrum rights? Why

or why not? If an operation requires primary rights, commenters should address not only why, but also whether that need will change over time. Would the spectrum supporting primary rights need to already be supporting LTE or other next-generation wireless services? Which spectrum bands would be possible candidates for primary rights authorized on an individual basis to offshore operations, and why? Commenters should discuss advantages and disadvantages to primary rights authorized to support offshore needs, and the costs and benefits of such an approach.

*C. Assignment Mechanisms for Initial Licensing*

22. We seek comment generally on which assignment mechanisms might be best suited for the needs of offshore operations. We also seek comment on using more than one assignment mechanism for licensing spectrum offshore, as we recognize that operations seeking to use spectrum offshore may have a diversity of funding sources and budget cycles. Commenters should discuss how our choices of assignment mechanism could best ensure diversity in access. Commenters should also discuss the costs and benefits of the different mechanisms.

23. *License-by-Rule and ''Licensed Light'' Access Models.* We seek comment generally on whether the Commission should provide additional offshore spectrum access through spectrum rights models that have minimal or no registration requirements. These can include a ''license light'' approach, where users submit a simplified registration form before using specific frequencies and sites, or a license-by-rule approach, where users are permitted to operate without registering or obtaining an individual license so long as they meet the qualifications to operate and their operations are consistent with the Commission's rules. Such models generally offer low barriers of entry but do not allow for exclusive spectrum use. They are premised on all entrants being able to share the available spectrum resource with little or no formal coordination and through operation under the framework provided by the applicable service rules. How well would these kinds of approaches serve offshore operations, and how do their benefits compare to those associated with other licensed assignment mechanisms? Should the Commission consider, for example, issuing nonexclusive, offshore-area licenses with site or area registrations in the Universal Licensing System (ULS) or a third-party database to facilitate coordination among offshore operators? Why or why not? Are there existing registration-based access models that could work well here?

24. *Ongoing, Demand-Driven, Licensing On a Site-by-Site Basis.* The Commission has significant experience implementing demand-driven, site-based, licensing mechanisms. Under this approach, an applicant requests authorization to construct at a specific transmitter location (or multiple locations) and expands its service by applying for additional sites as needed. The prime examples of this model of licensing are in the context of Private Land Mobile Radio and microwave services. Could a site-based licensing approach meet the needs of offshore spectrum operations? And would it meet the Commission's goal of advancing innovative and efficient spectrum policy?

25. The Commission has also relied on ongoing, demand-driven, licensing in the Cellular context and in its 700 MHz Relicensing regime. In the Cellular Service, after the initial licensing of geographic areas and buildout to establish service contours, applicants have applied for individual licenses only where there was a need for coverage, growing their network on a site-by-site basis. Is the Cellular Service licensing model something the Commission should consider for meeting the needs of offshore operations? Is it a good analogy for offshore licensing, or are there differences at sea versus land that would make that approach less desirable here? Assuming it is an appropriate model, could the Commission rely on the existing Cellular Service licensing rules for offshore licensing? Why or why not, and how would those rules need to be changed or updated if used as a starting point for potential offshore licensing rules?

26. Should the Commission use something similar to its 700 MHz Relicensing regime as a model for demand-driven licensing to meet offshore needs? In the 700 MHz Relicensing regime, the Commission had a single Phase I process for applicants to file applications for authority to operate in unserved areas. Phase II is an ongoing process that allows eligible parties to apply for any unserved areas that may remain after the Phase I process is complete. Would this approach be appropriate to meet the needs of offshore operations? How would ''unserved'' be defined in the offshore context? What are the advantages and disadvantages of this model if applied to offshore licensing? Could the Commission rely on this kind of model, regardless of which spectrum band is used?

27. *Negotiations-Based Licensing.* In the 900 MHz band, the Commission established a transition mechanism based primarily on negotiations between prospective overlay licensees, whether in-market or an adjacent market, and incumbent licensees. Would a negotiations-based authorization process meet offshore spectrum needs? Would an approach similar to the one used in the 900 MHz band facilitate more rapid offshore deployment? Why or why not?

28. *Geographic Area Licensing.* In many services, including many of our more recently licensed flexible-use services, the Commission has issued geographic area licenses for exclusive use. With geographic area licensing, a licensee is authorized to construct anywhere within a particular geographic area's boundary (subject to certain technical and other requirements) and generally does not need to submit additional applications for prior Commission approval of specific transmitter locations. We seek comment on whether geographic area licensing is appropriate for offshore licensing. Are there advantages to geographic area licensing over site-based licensing in the offshore space? Why or why not? If so, should we assign geographic area licenses offshore for all 3GPP standardized bands? Should there be multiple geographic area markets to cover any given U.S. coastal area or shores of the Great Lakes in any given band, or just one in each?

29. If we were to assign geographic area licenses offshore, should we then require offshore licensees to protect land-based licensees and adjacent-area, co-channel, offshore licensees using existing applicable signal strength limits, or would our rules need to be adjusted? What are the interference concerns we should consider, and would they vary by band? Would the ability to protect terrestrial licensees vary by band? Would existing bands' construction requirements or license terms need to be adjusted for offshore license areas depending on the use case? If so, how? Would a geographic area license be impractical if the offshore operation is mobile or on a structure such as a barge, and therefore could move between different geographic areas? Commenters should discuss all other advantages and disadvantages of geographic area licensing.

30. *Other Considerations.* We note that in the Gulf of Mexico, the Commission has licensed spectrum

using various approaches. How should our experience in the Gulf inform our approach for other offshore areas? Is offshore spectrum too complex for one assignment mechanism? Would multiple assignment mechanisms better suit offshore operations' spectrum needs? In other words, should the Commission consider using a variety of mechanisms, depending on which offshore area is at issue and the level of demand for spectrum usage? For example, is there an immediate and competing demand for certain areas in the Atlantic Ocean where windfarms are already being built, but less demand in the Great Lakes or off the Pacific coast, and should there be different assignment mechanisms implemented to reflect these differences? What is the demand, if any, for additional spectrum access off the shore of Alaska into the Arctic Ocean?

31. What would be the appropriate zones in which either an onshore or offshore licensee has exclusive authority to operate, subject to specific coordination and interference resolution mechanisms? Parties should discuss boundaries based on the Gulf of Mexico, state and county lines, or any other relevant consideration. Commenters should also discuss how far seaward the Commission could extend existing land-based service areas in a proposed band.

32. We also note that § 309 of the Communications Act requires assignment via competitive bidding for acceptance of mutually exclusive applications, with an exemption for public safety radio services. If demand were such that mutually exclusive applications were filed for a license offshore, an auction could be required to assign that license, unless an exemption applied. To what extent might the public safety exemption apply to assigning offshore spectrum? Are there other issues we should keep in mind regarding licenses assigned via competitive bidding for offshore purposes?

33. Are there any U.S. treaty obligations that may be relevant in assigning spectrum for offshore operations depending on which body of water is implicated? If yes, what are they and how should we take them into account? We note also that there are maritime and other definitions of what constitutes offshore areas. To what extent are these definitions relevant for our purposes here?

*D. Unlicensed Spectrum Use*

34. We also seek comment on how unlicensed spectrum access under our part 15 rules can support the needs of offshore operations. These rules allow operation without a license and provide low barriers for entry and wide flexibility in how the spectrum can be used. However, unlicensed operations must be conducted at low power levels that might limit the distance at which the signals could practically be used for offshore applications (such as in long-distance vessel-to-vessel or shore-to-offshore communication scenarios). Furthermore, unlicensed operations must not cause harmful interference to licensed services and must accept any harmful interference received.

35. Our existing rules generally permit unlicensed operation in offshore locations, although there are limitations that preclude such use in certain bands. Here, we seek to better understand how unlicensed operations are being used and how unlicensed use can be expanded in the offshore environment. What specific types of offshore operations are well-suited for deployment under our unlicensed rules and what applications might be better realized through licensed access models, and why? Do commenters anticipate that an expansion of licensed access models in offshore locations would affect existing unlicensed operations or future deployments, and if so how? What are the bandwidth requirements of those applications that can be realized through unlicensed use, and is there sufficient capacity and equipment presently available for deployment? Are there particular bands that would be especially well suited for unlicensed operations in offshore locations? Finally, are there changes to our existing rules that could facilitate the use of spectrum on an unlicensed basis in offshore locations?

*E. Access via Spectrum Leasing*

36. Another potential vehicle for accessing offshore spectrum, in addition to the assignment mechanisms discussed above, could be a spectrum lease arrangement. The Commission's spectrum leasing rules apply to all ''included services,'' and include Wireless Radio Services in which commercial or private licensees hold exclusive use rights. We seek comment on whether spectrum leasing might meet some (or all) of offshore operational needs, and whether this would vary by use case. Are there incumbent licensees with spectrum available for leasing? Are there existing terrestrial or offshore licensees interested in leasing spectrum for offshore operations? Would the Commission need to modify the authorizations of coastal land-based licensees to first provide them with rights that extend to offshore areas, as a threshold to enabling leasing of those rights? Why or why not? Should the Commission provide incentives for license holders to lease spectrum, and if so, what would those incentives look like? Would leased spectrum provide enough bandwidth for offshore operations? Should the Commission update the list of services to which our spectrum leasing rules apply to include offshore spectrum operations to facilitate the possibility of leasing? Should the Commission consider leasing combined with other approaches? Are there other rule or policy changes the Commission would need to take to enable a leasing marketplace for offshore spectrum?

*F. Spectrum Bands for Offshore Operations*

37. Different spectrum bands provide different spectral properties and utility that can meet different needs. Given the potential use cases for offshore spectrum discussed above, we seek comment generally on which individual bands, or a combination thereof, could best support the various needs of offshore operations.

38. What type of spectrum would best support offshore use? What characteristics are needed, such as high bandwidth, low latency, particular propagation characteristics, or other properties? Would a band used to support offshore operations need to already have certain equipment standards, such as 3GPP? Which specific bands, or combination of bands, would best support offshore use? Possibilities could include 600 MHz, 700 MHz, 800 MHz, 900 MHz, or AWS bands. Are any of these bands appropriate for offshore use? Why or why not? Would AWS–1 or other low-band frequencies accommodate offshore operations' spectrum needs? Would the interference protections in the aforementioned bands be enough to accommodate offshore spectrum and incumbent users?

39. Are there other bands currently used for commercial or private wireless networks that we should consider? For each band proposed, commenters should address whether there any issues regarding existing operators, whether large enough blocks or sufficient bandwidth would be available for offshore operations, and what modifications, if any, would be needed to service rules to accommodate offshore use. Are there advantages and disadvantages of any spectrum band considered?

40. We recognize that Commission rules contain performance requirements in certain bands. Would offshore

operations be able to meet the existing performance requirements in the band(s) commenters propose and should they be required to meet them? How might those performance requirements need to be adjusted given the difference of use cases and operations offshore versus on land? How might this vary based on whether the operations are private or commercial, and how localized the service offering is? Would license terms need to be adjusted given potential differences between deploying on land versus at sea?

41. Are there spectrum bands that we should not consider in order to protect incumbents in the band, or for other reasons? If so, which bands and why? Commenters should take into consideration the existing operations of both federal and non-federal users, particularly those uses related to public safety and other critical national purposes, including maritime and aeronautical endeavors. We seek comment on how to ensure protection of such operations as appropriate. Commenters should discuss interference protections for both incumbents and new offshore operations in any proposed band(s). We seek comment generally on what additional interference protections, for any band considered, offshore operations would need.

42. We note that offshore incumbent uses may differ from operations being protected by commercial or private wireless operations onshore, and thus protection requirements for a given band's use offshore may be different from those required for a band's onshore use. In other words, commenters should not assume that a band's use for a particular purpose onshore necessarily means it is well-suited for that purpose offshore.

### *G. Offshore Spectrum Access in Other Countries*

43. We note that other countries authorize use of offshore spectrum. We seek comment generally on the extent to which frameworks used abroad provide any insight for how the Commission might move forward in facilitating offshore licensing here. In the Netherlands, for example, Agentschap Telecom, part of the Ministry of Economic Affairs and Climate, has issued Tampnet and T-Mobile offshore 700 MHz licenses in the North Sea, using what it termed a ''distribution by demand'' model that was implemented by means of an auction. Ofcom, the United Kingdom telecommunications regulator, issues unified Spectrum Access Offshore Mobile licenses that cover all of the United Kingdom ''mobile bands'' (800 MHz, 900 MHz, 1800 MHz, 2100 MHz, 2.3 GHz and 3.4 GHz), but only for areas not covered by the rights granted to existing mobile network operators. The Spectrum Access Offshore Mobile license authorizes use of spectrum on a non-protection and non-interference basis, leaving coordination up to the licensees.

44. Do the Ofcom or North Sea models provide useful lessons for spectrum use by U.S. offshore operations? Why or why not? Do differences in geography and regulatory frameworks in the United Kingdom and the Netherlands warrant different approaches offshore in the United States? Are there other models for offshore spectrum access used by other countries that could provide guidance for our approach here, while still furthering our goals of innovative spectrum management and efficient spectrum use?

### *H. Additional Issues*

45. We invite comment on other possible approaches for the Commission's consideration. For instance, would convening Commission-led workshops comprised of a diverse array of experts from industry and government be helpful? Would any pilot project be appropriate, and if so, which particular frequency band(s) should be considered? Are there further studies that could help inform the Commission on important considerations with regard to offshore operations? Are there other studies, efforts, or analyses that we should consider in this proceeding? If so, we ask that commenters identify them and explain why they should be considered. We also seek comment on whether there are any security or other concerns to any of the approaches discussed herein. What international coordination issues may arise if we provide spectrum for offshore operations such as IoT?

46. In addition, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the various approaches and issues discussed herein. Specifically, we seek comment on how the various approaches that the Commission may consider may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

## IV. Ordering Clauses

47. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 301, 302, 303, 332, 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 332 and 403 this Notice of Inquiry *is adopted*.

48. Authority for this Notice may be found in sections 1, 2, 4(i), 301, 302, 303, 332, 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 332 and 403.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2022–13440 Filed 6–24–22; 8:45 am]

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# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Proposed New Fee Sites

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of proposed new fee sites.

**SUMMARY:** The Coconino National Forest is proposing to charge new fees at multiple recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

**DATES:** If approved, the new fee would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

**ADDRESSES:** Coconino National Forest, 1824 S Thompson St., Flagstaff, AZ 86001.

**FOR FURTHER INFORMATION CONTACT:** Christopher Johansen, Forest Recreation Officer, 928–203–7529 or *Christopher.Johansen@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, a $5 day-use fee per vehicle is proposed at Dry Creek, Fay Canyon, Mescal, Bell, Lava River Cave, and Bruce Brocket Day use sites. The Red Rock Pass and full suite of Interagency passes would be honored.

New fees would provide increased visitor opportunities, as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: June 22, 2022.

**Sandra Watts,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2022–13673 Filed 6–24–22; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Custer Gallatin National Forest—Yellowstone Ranger District—Stillwater Mining Company, East Boulder Mine Amendment 004 Expansion EIS

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice to extend the public scoping period.

**SUMMARY:** The Forest Service, United States Department of Agriculture, Custer Gallatin National Forest (CGNF) is issuing this notice to advise the public of a 20-day extension to the public scoping period for the preparation of an Environmental Impact Statement on the East Boulder Mine Amendment 004 Expansion.

**DATES:** Comments concerning the scope of the analysis must be received by July 18, 2022.

**ADDRESSES:** Comments can be submitted in written or electric formats. Mail written comments to: Custer Gallatin National Forest—Gardiner Ranger District, P.O. Box 5, Gardiner, MT 59030. To submit comments electronically through the Forest Service website: *https://www.fs.usda.gov/project/?project=61385,* click on ''Comment/Object on Project''. Acceptable formats for electronic comments are text or HTML email, Adobe Portable Document Format (PDF), or formats viewable in Microsoft Word (such as .doc or .docx).

**FOR FURTHER INFORMATION CONTACT:** Robert Grosvenor, CGNF Minerals Administrator, (406) 848–7375 ext. 28, or at: *robert.grosvenor@usda.gov.*

Individuals who use telecommunication devices for the deaf or hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The original Notice of Intent to prepare an Environmental Impact Statement on the East Boulder Mine Amendment 004 Expansion project was published in the **Federal Register** on May 27, 2022 (87 FR 11470). Recognizing that a 30-day period may be insufficient for comment preparation from all interested parties, the scoping period is being extended for 20 days from the date of this publication. All comments received from May 27, 2022, through the end date published in this notice will be considered. A detailed description of the proposed action and additional information is available at: *https://www.fs.usda.gov/project/?project=61385.*

Dated: June 21, 2022.

**Deborah Hollen,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2022–13643 Filed 6–24–22; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Proposed New Fee Site

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of proposed new fee site.

**SUMMARY:** The Helena-Lewis and Clark National Forest is proposing to charge a new fee at a recreation site listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from the fee would be used for operation, maintenance, and improvements of the recreation site. An analysis of nearby developed recreation sites with similar amenities shows the proposed fee is reasonable and typical of similar sites in the area.

**DATES:** If approved, the new fee would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

**ADDRESSES:** Helena-Lewis & Clark National Forest, 2880 Skyway Drive, Helena, MT 59602.

**FOR FURTHER INFORMATION CONTACT:** Rory Glueckert, Recreation Program Manager, 406–495–3761 or *rory.glueckert@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fee is only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

The Ear Mountain Cabin would be a new recreation rental opportunity and is proposed at $75 per night.

This new fee would provide increased visitor opportunities, as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for the cabin will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: June 22, 2022.

**Sandra Watts,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2022–13674 Filed 6–24–22; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

**[Docket No. RBS–22–CO–OP–0010]**

### 60-Day Notice of Proposed Information Collection: Agriculture Innovation Center Demonstration Program; OMB Control No.: 0570–0045

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Rural Business-Cooperative Service (RBCS) announces its' intention to request an extension of a currently approved information collection and invites comments on this information collection.

**DATES:** Comments on this notice must be received by August 26, 2022 to be assured of consideration.

**ADDRESSES:** Comments may be submitted by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RBCS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select ''RBS–22–CO–OP–0010'' to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

**FOR FURTHER INFORMATION CONTACT:** MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email *MaryPat.Daskla@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the following information collection that Rural Business-Cooperative Service (RBCS) is submitting to OMB as extension to an existing collection with Agency adjustment.

*Title:* 7 CFR part 4284, subpart K, Agriculture Innovation Center Demonstration Program.

*OMB Control Number:* 0570–0045.

*Expiration Date of Approval:* November 30, 2022.

*Type of Request:* Revision of a currently approved information collection.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 18 hours per response.

*Respondents:* Small business or organizations.

*Estimated Number of Respondents:* 34.

*Estimated Number of Responses per Respondent:* 2.5

*Estimated Number of Responses:* 83.

*Estimated Total Annual Burden on Respondents:* 1,465 hours.

*Abstract:* USDA's Rural Business-Cooperative Service (RBCS), Cooperative Programs administers the Agriculture Innovation Center Demonstration (AIC) Program. The primary objective of this program is to provide funds to Agriculture Innovation Centers (Centers) which provide agricultural producers with technical and business development assistance. RBCS collects information from applicants to confirm eligibility for the program and to evaluate the quality of the applications. Recipients of awards are required to submit reporting and payment request information to facilitate monitoring of the award and disbursement of funds.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorized the Secretary of the U.S. Department of Agriculture (USDA) to award grant funds to Centers.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used.

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Arlette Mussington, Rural Development Innovation Center—Regulations Management Division, at (202) 720–2825. Email: *arlette.mussington@usda.gov.*

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

**Karama Neal,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 2022–13624 Filed 6–24–22; 8:45 am]

**BILLING CODE 3410–XY–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–26–2022]**

### Foreign-Trade Zone (FTZ) 189—Kent/Ottawa/Muskegon Counties, Michigan; Notification of Proposed Production Activity, GHSP, Inc. (Automotive Products), Grand Haven, Hart and Holland, Michigan

GHSP, Inc., submitted a notification of proposed production activity to the FTZ Board (the Board) for its facilities in Grand Haven, Hart and Holland, Michigan within Subzone 189F. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on June 15, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include: tube plugs; lock pins; cable brackets for shifters; auxiliary pumps for oil, water and fuel; pump covers; liquid crystal displays (LCD); LED displays; printed circuit boards; touch sensors; motor assemblies; and, automobile shifters (duty rate ranges from duty-free to 3.8%).

The proposed foreign-status materials and components include: butyl rope; grease; bonding adhesives; solder; polypropylene; porene; lubricating gel; adhesives; mounting tapes; pump decor trims; plastic sheets; thermal trays; cable brackets; o-rings; ball bearings; gaskets; shift lock stoppers; shifter boot dust covers; encoder pads; tube plugs; blocker gaskets; printed circuit board gaskets; boot dust covers; electronic cells; bezels; electronic encoders; bezel flocking tapes; cable bracket pivot pins; wire gauges; metal screws; bracket screws; nut flanges; washers; rivets; lock pins; pivot pins; collars; springs—lever; pin shift cables; cable pins; cable brackets; plugs; auxiliary pumps; final pump assemblies, sensorless; pump covers; lamps; filter elements; relief valves; motor bearings; lead nylon spacers; stator overmolds; lamination stack, moldings; transfer switchers; gerotor sets; solenoids; button/pad assemblies; reflector holders; encoders, mode; glass tops; LED drivers; LCDs; transitional 5 burner LED displays; capacitors; resistors; stator boards; fuses; transistors; relays; switches; connectors; touch sensors; motor assemblies, sensorless; light pipes; LEDs; strain gauge sensors; micro sensors; head assembly kits; smart ultra-violet ''A'' actuators; magnet wires; wire harnesses; drive mode button assemblies; light reflectors; syringes for grease application; and, main housing covers (duty rate ranges from duty-free to 8.5%). The request indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is August 8, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: June 21, 2022.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2022–13663 Filed 6–24–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–6–2022]**

### Foreign-Trade Zone (FTZ) 43—Battle Creek, Michigan, Authorization of Production Activity, Pfizer, Inc. (Nirmatrelvir Active Pharmaceutical Ingredient for COVID–19 Treatment), Kalamazoo, Michigan

On February 22, 2022, Pfizer, Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 43E, in Kalamazoo, Michigan.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 11410, March 1, 2022). On June 22, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 22, 2022.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2022–13662 Filed 6–24–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–835]**

### Emulsion Styrene-Butadiene Rubber From the Russian Federation: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that Emulsion Styrene-Butadiene Rubber (ESBR) from the Russian Federation (Russia) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 01, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable June 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Caitlin Monks or Zachary Le Vene, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2670 or (202) 482–0056, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on December 10, 2021.[1] On March 31, 2022, Commerce postponed the preliminary determination of this investigation until June 14, 2022.[2]

[1] *See Emulsion Styrene-Butadiene Rubber from the Czech Republic, Italy, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 70447 (December 10, 2021) (*Initiation Notice*).

[2] *See Emulsion Styrene-Butadiene Rubber from the Czech Republic and the Russian Federation: Postponement of Preliminary Determinations in the*

Continued

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

## Scope of the Investigation

The products covered by this investigation are ESBR from Russia. For a complete description of the scope of this investigation, *see* Appendix I.

## Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] On January 10, 2022, we received timely filed comments from the petitioner regarding the product characteristics and the scope of the investigation as it appeared in the *Initiation Notice*.[6] On January 21, 2022, Commerce determined the product characteristics applicable to this investigation.[7] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

## Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

## All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Public Joint Stock Company SIBUR Holding, Joint Stock Company Voronezhsintezkauchuk, and SIBUR International GmbH (collectively, SIBUR) and for LLC TATNEFT–AZS Center, LLC Togliattikauchuk, Tolyattisintez, and Public Joint Stock Company TATNEFT (collectively, TATNEFT) that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the individually examined respondents using the publicly ranged total values of each respondent's sales of the merchandise under consideration to the United States during the POI.[8]

## Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter/producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Public Joint Stock Company SIBUR Holding/Joint Stock Company Voronezhsintezkauchuk/SIBUR International GmbH[9] .. | 18.75 |
| LLC TATNEFT–AZS Center/LLC Togliattikauchuk/Tolyattisintez/Public Joint Stock Company TATNEFT[10] ..... | 8.14 |
| All Others ..... | 12.41 |

## Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

## Disclosure

Commerce intends to disclose its calculations and related analysis to interested parties in this preliminary

*Less-Than-Fair-Value Investigation,* 87 FR 18767 (March 31, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice.*

[6] *See* Petitioner's Letter, ''Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and Russian Federation: Petitioner's Comments on Scope and Product Characteristics,'' dated January 10, 2022.

[7] *See* Memorandum, ''Product Characteristics for Sections B–D Questionnaire,'' dated January 21, 2022.

[8] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the Preliminary All-Others Rate Calculation Memorandum.

[9] Commerce preliminarily determines that Public Joint Stock Company SIBUR Holding/Joint Stock Company Voronezhsintezkauchuk/SIBUR International GmbH are a single entity. *See* Preliminary Decision Memorandum.

[10] Commerce preliminarily determines that LLC TATNEFT–AZS Center, LLC Togliattikauchuk, and Public Joint Stock Company TATNEFT are a single entity. *See* Preliminary Decision Memorandum.

determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On May 26, 2022, pursuant to 19 CFR 351.210(e), SIBUR and TATNEFT separately requested that, in the event of an affirmative preliminary determination in this investigation, Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to 735(a)(2) of the Act.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If Commerce's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of ESBR from Russia are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: June 14, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Investigation

The products covered by this investigation are cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigation includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigation covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.''

Specifically excluded from the scope of this investigation are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.,* IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this investigation are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstracts Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2022–13543 Filed 6–24–22; 8:45 am]

**BILLING CODE 3510–DS–P**

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See* SIBUR's Letter, ''Emulsion Styrene-Butadiene Rubber from the Russian Federation: Request for Extension of Final Determination and Provisional Measures,'' dated May 26, 2022; *see also* TATNEFT's Letter, ''Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation: Request for Postponement of Final Determination and Provisional Measures Period,'' dated May 26, 2022.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–851–805]**

### Emulsion Styrene-Butadiene Rubber From the Czech Republic: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that emulsion styrene-butadiene rubber (ESBR) from the Czech Republic is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable June 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Leo Ayala or Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945 or (202) 482–2371, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on December 10, 2021.[1] On March 31, 2022, Commerce postponed the preliminary determination of this investigation until June 14, 2022.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

#### Scope of the Investigation

The product covered by this investigation is ESBR from the Czech Republic. For a complete description of the scope of this investigation, *see* Appendix I.

#### Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] The petitioner commented on the scope affirming the scope of the investigation as it appeared in the *Initiation Notice.* No other interested party submitted scope comments. Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

#### Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

#### All-Others Rate

Commerce calculated an individual estimated weighted-average dumping margin for Synthos Kralupy A.S. (Synthos), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Synthos is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

#### Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

| Exporter/producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Synthos Kralupy A.S | 6.03 |
| All Others | 6.03 |

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

#### Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

#### Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last

[1] *See Emulsion Styrene-Butadiene Rubber from the Czech Republic, Italy, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 70447 (December 10, 2021) (*Initiation Notice*).

[2] *See Emulsion Styrene-Butadiene Rubber from the Czech Republic and the Russian Federation: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigation,* 87 FR 18767 (March 31, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from the Czech Republic'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

verification report is issued in this investigation.[6] Rebuttal briefs may be submitted seven days after the date that case briefs are due. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

### Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On June 10, 2022, pursuant to 19 CFR 351.210(e), Synthos requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[7] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

### International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of ESBR from the Czech Republic are materially injuring, or threaten material injury to, the U.S. industry.

### Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c) and 19 CFR 351.210(g).

Dated: June 14, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—Scope of the Investigation

The products covered by this investigation are cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigation includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigation covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.''

Specifically excluded from the scope of this investigation are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.,* IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this investigation are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstracts Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2022–13542 Filed 6–24–22; 8:45 am]

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[6] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[7] *See* Synthos' Letter, ''Emulsion Styrene-Butadiene Rubber from the Czech Republic: Request to Postpone Deadline for Issuing the Final Determination'' dated June 10, 2022.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–876]**

## Welded Line Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) finds that certain producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) December 1, 2019, through November 30, 2020.

**DATES:** Applicable June 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Adam Simons, 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) 482–6172.

**SUPPLEMENTARY INFORMATION:**

### Background

This review covers 31 producers/exporters of the subject merchandise.

Commerce selected two companies, Hyundai Steel Company/Hyundai HYSCO (Hyundai Steel) and SeAH Steel Corporation (SeAH), for individual examination.[1] The producers/exporters not selected for individual examination are listed in Appendix II.

On January 7, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.[2] On March 2, 2022, we received case briefs from Hyundai Steel and SeAH. On April 11, 2022, we postponed the final results to no later than June 17, 2022.[3] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

**Scope of the Order** [5]

The merchandise subject to the *Order* is welded line pipe.[6] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs are listed in Appendix I to this notice and addressed in the Issues and Decision Memorandum. Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the calculation of the preliminary weighted-average dumping margins for Hyundai Steel and SeAH.

**Determination of No Shipments**

As noted in the *Preliminary Results,* we received a no shipment claim from HISTEEL Co., Ltd. (HISTEEL) and preliminarily determined that HISTEEL had no shipments during the POR.[7] We received no comments from interested parties with respect to this claim. Therefore, because the record indicates that HISTEEL had no entries of subject merchandise to the United States during the POR, we continue to find that HISTEEL had no shipments during the POR.

**Final Results of the Review**

As a result of this review, we determine the following weighted-average dumping margins for the period December 1, 2019, through November 30, 2020:

| Producer or exporter | Weighted-average dumping margin (percent) |
|---|---|
| Hyundai Steel Company/Hyundai HYSCO | 1.73 |
| SeAH Steel Corporation | 0.00 |
| Companies Not Selected for Individual Review [8] | 1.73 |

**Disclosure of Calculations**

We intend to disclose the calculations performed for Hyundai Steel and SeAH in connection with these final results to interested parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

**Assessment Rates**

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), Hyundai Steel reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. SeAH did not report the actual entered value for all of its U.S. sales; in such instances, we calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies not selected for individual review, we used as the assessment rate the cash deposit rate calculated for Hyundai Steel because this is the only rate which is not zero, *de minimis,* or determined entirely on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for the future deposits of estimated duties where applicable.[9]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Hyundai Steel or SeAH for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[1] *See* Memorandum, ''Respondent Selection,'' dated February 17, 2021.

[2] *See Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 928 (January 7, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Memorandum, ''Welded Line Pipe from the Republic of Korea: Extension of Deadline for Final Results of 2019–2020 Antidumping Duty Administrative Review,'' dated April 11, 2022.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015) (*Order*).

[6] For a complete description of the scope of the order, *see Preliminary Results* PDM at 3.

[7] *See Preliminary Results.*

[8] See Appendix II for a full list of these companies.

[9] *See* section 751(a)(2)(C) of the Act.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies covered in this review will be equal to the weighted-average dumping margin that is established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.38 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Order**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 17, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**List of Topics Discussed in the Issues and Decision Memorandum**



## Appendix II

**List of Companies Not Selected for Individual Review Receiving the Review-Specific Rate**

1. AJU BESTEEL Co., Ltd.
2. BDP International, Inc.
3. Daewoo International Corporation
4. Dong Yang Steel Pipe
5. Dongbu Incheon Steel Co.
6. Dongbu Steel Co., Ltd.
7. Dongkuk Steel Mill
8. EEW Korea Co., Ltd.
9. Husteel Co., Ltd.
10. Hyundai RB Co. Ltd.
11. Kelly Pipe Co., LLC
12. Keonwoo Metals Co., Ltd.
13. Kolon Global Corp.
14. Korea Cast Iron Pipe Ind. Co., Ltd.
15. Kurvers Piping Italy S.R.L.
16. Miju Steel MFG Co., Ltd.
17. MSTEEL Co., Ltd.
18. NEXTEEL Co., Ltd.
19. Poongsan Valinox (Valtimet Division)
20. POSCO
21. POSCO Daewoo
22. R&R Trading Co. Ltd.
23. Sam Kang M&T Co., Ltd.
24. Sin Sung Metal Co., Ltd.
25. SK Networks
26. Soon-Hong Trading Company
27. Steel Flower Co., Ltd.
28. TGS Pipe
29. Tokyo Engineering Korea Ltd.

[FR Doc. 2022–13664 Filed 6–24–22; 8:45 am]

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[10] *See Order.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–809]**

## Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 16, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Nexteel Co., Ltd., et al.* v. *United States,* Consol. Court no. 20–03868, sustaining the U.S. Department of Commerce (Commerce)'s first remand results pertaining to the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) covering the period November 1, 2017, through October 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Nexteel Co., Ltd., SeAh Steel Corporation, and Hyundai Steel Company.

**DATES:** Applicable June 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dusten Hom, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482- 5075.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 6, 2020, Commerce published its *Final Results* in the 2017–2018 AD administrative review of CWP from Korea.[1] Commerce determined in the *Final Results* that a particular market situation (PMS) existed with respect to the respondents' purchases of hot-rolled coil (HRC), the primary input for the production of subject merchandise, and, accordingly, we made an adjustment to the cost of production for the purposes calculating normal value when based upon home

[1] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 71055 (November 6, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

market sales and for the purposes of the sales-below-cost test.[2]

Nexteel Co., Ltd., Hyundai Steel Company, and SeAh Steel Corporation appealed Commerce's *Final Results.* On September 27, 2021, the CIT remanded the *Final Results* to Commerce, holding that Commerce is not permitted to make a PMS adjustment to the cost of production as an alternative calculation methodology when using normal value based on home market sales, and that Commerce cannot adjust cost of production for purposes of the sales-below-cost test.[3]

In its final remand redetermination, issued in October 2021, Commerce removed the PMS adjustment when calculating its dumping margin but continued to find that a PMS existed in Korea for HRC during the period of review.[4] The CIT sustained Commerce's final redetermination.[5]

### Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the U.S Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's June 16, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

### Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to mandatory respondent Nexteel Co., Ltd., and the non-examined companies (SeAh Steel Corporation and Hyundai Steel Company) as follows:

| Company | Weighted-average dumping margin (percent) |
|---|---|
| Nexteel Co., Ltd | 1.63 |
| Non-Examined Companies (SeAH Steel Corporation and Hyundai Steel Company) | 2.35 |

### Cash Deposit Requirements

Because Nexteel Co., Ltd., SeAh Steel Corporation, and Hyundai Steel Company have superseding cash deposit rates, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and/or exported by Nexteel Co., Ltd., Hyundai Steel Company, and SeAh Steel Corporation, and were entered, or withdrawn from warehouse, for consumption during the period November 1, 2017, through October 31, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Nexteel Co., Ltd., Hyundai Steel Company, and SeAh Steel Corporation in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[8] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: June 22, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–13774 Filed 6–24–22; 8:45 am]

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[2] *See Final Results* IDM at Comment 1.

[3] *See Nexteel Co., Ltd., et al.* v. *United States,* Consol. Court No. 20–03868, Slip Op. 21–132 (CIT September 27, 2021).

[4] *See* Final Results of Redetermination Pursuant to Court Order *Nexteel Co., Ltd., et al.* v. *United States,* Court No. 20–03868, Slip Op. 21–132 (CIT September 27, 2021), dated October 29, 2021.

[5] *See Nexteel Co., Ltd., et al.* v. *United States,* Consol. Court No. 20–03868, Slip Op. 22–69 (CIT June 16, 2022).

[6] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[7] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[8] *See* 19 CFR 351.106(c)(2).

## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## National Conference on Weights and Measures 107th Annual Meeting

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** The 107th Annual Meeting of the National Conference on Weights and Measures (NCWM) will be held in Tacoma, Washington from Sunday, July 10, 2022, through Thursday, July 14, 2022. This notice contains information about significant items on the NCWM Committee agendas but does not include all agenda items. As a result, the items are not consecutively numbered.

**DATES:** The 2022 Annual Meeting will be held from Sunday, July 10, 2022, through Thursday, July 14, 2022. The meeting schedule is available on the NCWM website at *www.ncwm.com.*

**ADDRESSES:** This meeting will be held at the Hotel Murano, 1320 Broadway Tacoma, Washington 98402.

**FOR FURTHER INFORMATION CONTACT:** Dr. Katrice Lippa, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Lippa at (301) 975–3116 or by email at *katrice.lippa@nist.gov*. The meeting is open to the public, but the payment of a registration fee is required. Please see the NCWM website (*www.ncwm.com*) to view the meeting agendas, registration forms, and hotel reservation information.

**SUPPLEMENTARY INFORMATION:** Publication of this notice on the NCWM's behalf is undertaken as a public service and does not itself constitute an endorsement by the National Institute of Standards and Technology (NIST) of the content of the notice. NIST participates in the NCWM as an NCWM member and pursuant to 15 U.S.C. 272(b)(10) and (c)(4) and in accordance with Federal policy (*e.g.,* OMB Circular A–119 ''Federal Participation in the Development and Use of Voluntary Consensus Standards'').

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, and representatives from the

private sector and federal agencies. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST hosted the first meeting of the NCWM in 1905. Since then, the conference has provided a model of cooperation between Federal, State, and local governments and the private sector. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

The NCWM has established multiple Committees, Task Groups, and other working bodies to address legal metrology issues of interest to regulatory officials, industry, consumers, and others. The following are brief descriptions of some of the significant agenda items that will be considered by some of the NCWM Committees at the NCWM Annual Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the 2022 Annual Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices'' (NIST Handbook 44 or HB 44). Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of Legal Metrology and Engine Fuel Quality'' (NIST Handbook 130 or HB 130) and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods'' (NIST Handbook 133 or HB 133).

**NCWM S&T Committee (S&T 107th Annual Meeting)**

The following items are proposals to amend NIST Handbook 44:

*FRN–2022 Annual Meeting (S&T Items)*

Item Block 2 (B2) Define True Value for Use in Error Calculations

BLK–2: (SCL–20.3, SCL–20.4, SCL–20.5, SCL–20.6, SCL–20.7, and SCL–20.8)

The S&T Committee will further consider a proposal that has been designated ''Assigned'' meaning that the Committee wants to allow more time for review by stakeholders and possibly further development to address concerns. This ''block'' proposal includes six individual items related to the application of NIST Handbook 44 requirements based on the values of a scale's verification scale division ''e'' or minimum scale division ''d''. Adoption of this proposal would have a significant impact on high-precision scales of Accuracy Class I and II, particularly in cases where the values of ''e'' and ''d'' are not equal. Whereas the classification and accuracy of a scale are currently based on a scale's verification scale division ''e'' in NIST Handbook 44, when a scale's minimum scale division value ''d'' is different than its verification scale division ''e'' on Class I and II scales, the ''d'' value is the smaller of the two and makes possible the reading of the indication to a significantly higher resolution.

Item Block 4 (B4) Electronically Captured Tickets or Receipts

BLK–4: (GEN–21.2, LMD–21.2, VTM–21.1, LPG–21.1, CLM–21.1, MLK–21.1, MFM–21.2, CDL–21.1, HGM–21.1, and OTH–21.2)

The S&T Committee will further consider a proposal to allow for the expanded use of electronically captured tickets and receipts by amending NIST HB 44 Sections 1.10. General, 3.30. LMD, 3.31. VTM, 3.32. LPG, 3.34. CLM, 3.37. MFM, 3.38. CDL, 3.39. HGM, 3.35. Milk Meters, and the definition of ''recorded representation'' in Appendix D, Definitions. The Committee amended this carry-over block of items during the 2020 Interim Meeting based on comments it received expressing a continued need for printed tickets. As a result, the proposal now references NIST HB 44 paragraph G–S.5.6. Recorded Representation in various specific codes. At the 2021 NCWM Annual Meeting, this item remained ''Developing'' for further comment and consideration. At the 2022 Interim Meeting the S&T Committee again designated a ''Developing'' status for this block of items to provide stakeholders the opportunity for further review and additional comments on the various devices affected by this proposal.

LMD—Liquid Measuring Devices

LMD–21.1 Table S.2.2. Categories of Device Method of Sealing

The S&T Committee will further consider a proposal to amend NIST HB 44 Section 3.30. Liquid-Measuring Devices to permit the use of an electronic log, in lieu of a printed copy for devices with Category 3 sealing. The current ''Category 3'' sealing requirements in NIST HB 44 Liquid-Measuring Devices Code Section 3.30. specify that a printed copy of an event logger must be available on demand through the device or through another on-site device and that the information may also be available electronically. The new proposal would amend the language in Table S.2.2. ''Categories of Device and Methods of Sealing'' to permit either a printed or electronic form of the event logger be made available at time of inspection. This item, LMD–21.1 was previously a ''block'' item with LMD 20.1. Both items were similar proposals, so the submitters of both items agreed to withdraw LMD–20.1 and further develop LMD 21.1. At the 2021 NCWM Interim Meeting, the Committee agreed to withdraw item LMD–20.1 from the previous block of items and designated LMD–21.1 as a developing item so that the submitters of both items could work together to further develop item LMD–21.1. At the 2021 NCWM Annual Meeting this item remained ''Developing'' for further comments and consideration. At the 2022 NCWM Interim Meeting both industry and regulatory participants were in support of the changes to allow the option of printed or electronic format for event loggers, as a method of sealing for Liquid Measuring Devices. As such, the Committee designated a Voting status for this item.

VTM—Vehicle Tank Meters

VTM–18.1 S.3.1 Diversion of Measured Liquid and S.3.1.1. Means for Clearing the Discharge Hose and UR.2.6. Clearing the Discharge on a multiple-product, single discharge hose

The S&T Committee will further consider this item, which proposes to provide specifications and user requirements for manifold flush systems designed to eliminate product contamination on VTMs used for multiple products. This proposal would add specifications on the design of VTMs under S.3.1.1. ''Means for

Clearing the Discharge Hose.'' and add a new user requirement UR.2.6. ''Clearing the Discharge Hose.'' During open hearings of previous NCWM meetings, comments were heard about the design of any system to clear the discharge hose of a product prior to the delivery of a subsequent product which could provide opportunities to fraudulently use this type of system. At the 2021 NCWM Annual Meeting this item remained ''Developing'' for further comments and consideration. At the 2022 Interim Meeting the committee agreed to add a new paragraph UR.2.6.2., Minimizing Cross Contamination, to address issues raised about the possibility of cross contamination in receiving tanks with the use of this equipment. The committee designated a Voting status for this item.

EVF—Electric Vehicle Fueling Systems

EVF–20.1 S.1.3.2. EVSE Value of the Smallest Unit

The S&T Committee will further consider a proposal that would specify the maximum value of the indicated and/or recorded electrical energy unit used in an EVSE (Electric Vehicle Supply Equipment). This proposal would reduce (by a factor of 10) the current specified values of these units. The current maximum values of 0.005 MJ and 0.001 kWh would be changed to 0.0005 MJ and 0.0001 kWh respectively. The submitters contend that testing of these systems would be expedited through these changes and reduce the amount of time necessary to complete official tests. During the 2021 NCWM Annual Meeting additional changes were proposed to the Electric Vehicle Fueling System Code to add a new paragraph S.1.3.X to address how the value of the quantity unit shall be expressed and at this meeting this item remained ''Developing'' for further comments and consideration. At the 2022 Interim Meeting the Committee agreed to additional changes to the item under consideration to address how the smallest units can be expressed. Language was added such that the smallest unit for the megajoule is to be expressed as a decimal multiple or submultiple of 5 and the kilowatt-hour is to be expressed as a decimal multiple or submultiple of 1. The Committee designated a Voting status for this item.

GMA—Grain Moisture Meters 5.56. (A)

GMA–19.1 Table T.2.1. Acceptance and Maintenance Tolerances Air Oven Method for All Grains and Oil Seeds.

The S&T Committee will further consider a proposal that would reduce the tolerances for the air oven reference method in the Grain Moisture Meter Code. The proposed new tolerances would apply to all types of grains and oil seeds. This item is a carry-over proposal from 2019 and would replace the contents of Table T.2.1. with new criteria. Additional inspection data will be collected and reviewed to assess whether or not the proposed changes to the tolerances are appropriate. At the 2021 Annual Meeting this item remained ''Developing'' to review the results of additional data. At the 2022 Interim Meeting the Committee designated a Developing status for this item to allow for consideration of additional data.

TXI/TNS—Taximeters and Transportation Network Measurement Systems

Item BLOCK 3 (B3). Tolerances for Distance Testing in Taximeters and Transportation Network Measurement Systems.

The S&T Committee will further consider changes included in this block affecting the NIST HB 44 Taximeters Code (Section 5.54.) and the Transportation Network Measurement Systems (TNMS) Code (Section 5.60.) that would amend the value of tolerances allowed for distance tests. The changes proposed in this item would change the Taximeters Code requirement T.1.1. ''On Distance Tests'' by increasing that tolerance to 2.5% when the test exceeds one mile. The change to the TNMS Code affects paragraph T.1.1. ''Distance Tests'' by reducing the tolerance allowed on overregistration under T.1.1.(a) from the current 2.5% to 1% when the test does not exceed one mile and would increase the tolerance for underregistration in T.1.1.(b) from 2.5% to 4%. These changes if adopted would align the tolerances values for distance tests allowed for taximeters and TNMS. At the 2021 NCWM Annual Meeting it was noted that these items were being discussed with the USNWG. This item remained ''Developing'' for further comment and consideration. At the 2022 Interim Meeting the Committee designated a Developing status for this item and recommended that the submitter work with the USNWG to further develop the item.

**NCWM L&R Committee**

*NIST Handbook 130 and NIST Handbook 133*

The following items are proposals to amend NIST Handbooks 130 and 133:

Item Block 1 (B1)—Multiunit or Variety Packages (NIST HB 130 and HB 133)

The L&R Committee will be addressing a group of proposals that will include the adoption for creating a Chapter 5, Specialized Test Procedures in NIST HB 133 to verify the net quantity of contents of retail multiunit or variety packages. In addition, modified language will be addressed in the following sections of NIST HB 130, PAL–19.1. UPLR, Sec. 2.8. Multiunit Package. NET–19.2. NIST HB 133 Modify ''scope'' for Chapters 2 through 4, add a note following Sections 2.3.7.1. and 2.7.3., and clarifying Section 2.8. Multiunit.

Item MOS–22.4. Section 2.16. Compressed or Liquefied Gasses in Refillable Cylinders

The L&R Committee will consider proposed amendments to NIST HB 130, Method of Sale, Section 2.16. for the method of sale of Compressed or Liquefied Gases in Refillable Cylinders. The amendments are being considered so that existing NIST HB 130 requirements are not in conflict with new requirements published by the U.S. Department of Transportation (DOT) in a Final Rule—entitled *Hazardous Materials: Miscellaneous Amendments Pertaining to DOT Specification Cylinders,* which has been implemented in 49 CFR 178.35 . It is likely that the conflicting requirements in the Method of Sale of Commodities Regulation will be preempted by these (DOT) regulations because DOT has exclusive authority to regulate the safety and interstate commerce of this commodity.

Item MOS–20.5 Section 2.21 Liquefied Petroleum Gas

The L&R Committee will further consider a proposal to clarify the existing language for the method of sale of Liquefied Petroleum Gas. This will include changes to the existing language within NIST HB 130 that references a value of ''15.6 °C'' for temperature determinations in metric units. According to the current industry practice for sales of petroleum products, the reference temperature for sales in metric are based on 15 °C rather than the exact conversion from 60 °F (which is 15.6 °C). Thus, the temperature reference in metric should be 15 °C. This will also add language for metered sales with a maximum capacity equal to or greater than 20 gal/min will have a metering system that automatic temperature compensates. For metering systems with a maximum capacity less than 20 gal/min adding an effective date of January 2030 to all metered sales shall be accomplished using a metering system that automatic temperature compensates.

Item MOS 22.3. Section 2.4. Fireplace and Stove Wood

The Committee will consider a proposal to modify and provide clarity to the language as to how packaged natural wood and compressed firewood bricks shall be sold. This also clarifies the terms for plural and singular representation for the units.

Item 22.1. Uniform Labeling Regulation for Electronic Commerce (referred as e-commerce) Products

The L&R Committee will further consider a proposal that has been designated as an ''Assigned'' item, meaning that further development will be done by the Packaging and Labeling Subcommittee. This proposal would add a new regulation into NIST HB 130 that pertains to the labeling of products in e-commerce for consumer commodities and non-consumer commodities. This regulation will provide guidance to industry, as well as those states that adopt this regulation for the purpose of inspecting e-commerce websites. This regulation would also lay out the terms that shall appear on an e-commerce website. The development of this item will include outreach to stakeholders, including federal agencies. Adequate time should be considered for the implementation of this regulation for online retailers.

Item Block 3 Cannabis

B3: PALS –22.1. Section XX. *Cannabis* and *Cannabis*-Containing Products.[1]

The Committee will further consider proposals to establish definitions within NIST HB 130 Packaging and Labeling Requirements for *Cannabis* and *Cannabis* containing products. In addition, PAL–22.2 Section 10.XX. *Cannabis* and *Cannabis*-Containing Products will establish labeling requirements. B3: NET–22.1. Section 1.XX. *Cannabis* and *Cannabis*-Containing Products and 2.XX. *Cannabis* and *Cannabis*-Containing Products. provides for a 3% moisture allowance for Cannabis containing more than 0.3% total Delta-9 THC or containing 0.3% less total Delta-9 THC (hemp). B3: MOS–22.2. HB130 Section 1.XX. and Section 2.XX. *Cannabis* and *Cannabis*-Containing Products. The Committee will consider a proposal to amend these two sections to include language for a method of sale for Cannabis. Included within this proposal is also a water activity limit of 0.60 (± 0.05), when unprocessed Cannabis is sold or transferred.

[1] In contrast to hemp, marijuana, defined as cannabis with a concentration of more than 0.3 percent on a dry weight basis, remains a Schedule I substance under the Controlled Substances Act (CSA). 21 U.S.C. 802(16); 21 U.S.C. 812(d); 21 CFR 1308.11(d)(23).

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2022–13541 Filed 6–24–22; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC122]**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Issuance of a permit; for implementation of the Rescue and Rearing Management Plan (RRMP) for Petaluma River Steelhead.

**SUMMARY:** Notice is hereby given that NMFS has issued a permit pursuant to Section 10 of the Endangered Species Act (ESA) for the implementation of the RRMP by the United Anglers of Casa Grande (UACG).

**FOR FURTHER INFORMATION CONTACT:** Jodi Charrier, Santa Rosa, California (ph.: 707–575–6069; email: *jodi.charrier@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

### ESA-Listed Species Covered in This Notice

- Steelhead (*Oncorhynchus mykiss*)—Central California Coast (CCC) distinct population segment (DPS)

### Discussion of the Biological Analysis Underlying Permit Issuance

NMFS has issued a permit for UACG to implement the RRMP, which is intended to increase adult CCC steelhead DPS abundance in the Petaluma River Watershed. Fish rearing will occur at the UACG Hatchery and will be run by Casa Grande High School located in Petaluma, California. The RRMP has two main components: (1) rescue and translocate wild steelhead from drying stream reaches; and (2) captively rear wild fry at the UACG Hatchery to be released as smolts into natal tributaries. There is no spawning of steelhead at the Hatchery. These management actions should result in higher survival rates; thereby increasing the abundance of the population over time.

The program uses natural-origin fish, and the permit for this program is issued under ESA section 10(a)(1)(A). Description of the programs was provided in the RRMP submitted by the UACG. NMFS has analyzed the effects of the RRMP on CCC DPS steelhead listed under the ESA, and has concluded that the program is not likely to jeopardize the continued existence of CCC steelhead or destroy or adversely modify its designated critical habitat. Authorization of the activities is contingent upon implementation of all of the monitoring, evaluation, reporting tasks or assignments, and enforcement activities included in the permit.

### Summary of Comments Received on the RRMP

NMFS made the permit application available for public comment on February 16, 2022 (87 FR 8787) for 30 days, as required by the ESA. No comments were received.

Dated: June 22, 2022.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2022–13672 Filed 6–24–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC058]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off New Jersey and New York in the Area of the Atlantic Shores Lease Area (OCS–A 0541)

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from Atlantic Shores Offshore Wind Bight, LLC (Atlantic Shores Bight) for authorization to take marine mammals incidental to site characterization surveys off New Jersey and New York in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area (OCS–A 0541). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take

marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than July 27, 2022.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.taylor@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

## National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

## Summary of Request

On April 8, 2022, NMFS received a request from Atlantic Shores Bight for an IHA to take marine mammals incidental to marine site characterization survey activities off New Jersey and New York. The application was deemed adequate and complete on May 23, 2022. Atlantic Shores Bight's request is for take of 15 species of marine mammals by Level B harassment only. Neither Atlantic Shores Bight nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued three IHAs to Atlantic Shores, the parent company of Atlantic Shores Bight, for similar work in a comparable geographic region (85 FR 21198, April 16, 2020; 86 FR 21289, April 22, 2021; 87 FR 24103, April 20, 2022). The 2020 monitoring report confirmed that Atlantic Shores had previously implemented the required mitigation and monitoring, and demonstrated that no impacts of a scale or nature not previously analyzed or authorized had occurred as a result of the activities conducted under the 2020 IHA. At the time of developing this proposed IHA for Atlantic Shores Bight, the Atlantic Shores 2021 (Renewal) monitoring report was not available as the renewal IHA expired on April 19, 2022 (86 FR 21289; April 22, 2021).

## Description of Proposed Activity

### *Overview*

As part of its overall marine site characterization survey operations, Atlantic Shores Bight proposes to conduct high-resolution geophysical (HRG) surveys in the Lease Area (OCS)–A 0451 and along potential submarine export cable routes (ECR) to a landfall location in either New York or New Jersey. These two areas are collectively referred to as the survey area. The survey area is approximately 1,375,710 acres (5,567.3 $km^2$) and extends from 11 nautical miles (20 km) offshore of New Jersey and New York out to a maximum distance of approximately 40 nautical miles (74 km).

The purpose of the proposed surveys are to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area and along ECRs. A maximum of three survey vessels may operate at any one time during the proposed surveys. Underwater sound resulting from Atlantic Shores Bight's proposed site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of behavioral harassment. Atlantic Shores Bight intends to conduct HRG surveys

within the lease area and ECR survey areas over a period of up to 12 months.

*Dates and Duration*

Survey activities are proposed to initiate on August 1, 2022. The estimated duration of the in-water activities is expected to be up to 360 total survey days over the course of a single year within the two survey areas (Table 1). As multiple vessels (*i.e.,* a maximum of three survey vessels) may be operating at any one time across the Lease Area and ECR Survey Area, each day that a survey vessel is operating counts as a single survey day. For example, if three vessels are operating in the ECR and Lease Areas concurrently, this counts as three survey days. This schedule is based on 24-hours of operations throughout 12 months. The schedule presented here for this proposed project has accounted for potential down time due to inclement weather or other project-related delays.

TABLE 1—NUMBER OF SURVEY DAYS FOR PROPOSED HRG ACTIVITIES

| Survey areas | Number of active survey days expected |
|---|---|
| Lease Survey Area (OCS–A 541) | 180 |
| ECR Survey Area | 180 |
| Total | 360 |

*Specific Geographic Region*

Atlantic Shores Bight's proposed activities would occur in the Northwest Atlantic Ocean within Federal and state waters (Figure 1). Surveys would occur in the Lease Area and along potential ECRs to landfall in either New York or New Jersey. Proposed activities would occur within the Commercial Lease of Submerged Lands for Renewable Energy Development Lease Area OCS–A 0541. The survey area is approximately 1,375,710 acres (5,567.3 square kilometers ($km^2$)) and extends from 11 nautical miles (20 kilometers (km)) offshore to approximately 40 nautical miles (nm; 74 kilometers (km)) offshore. In general, the survey area spans from Sandy Hook Bay to Ocean City, New Jersey. No nearshore surveys are proposed for this project.

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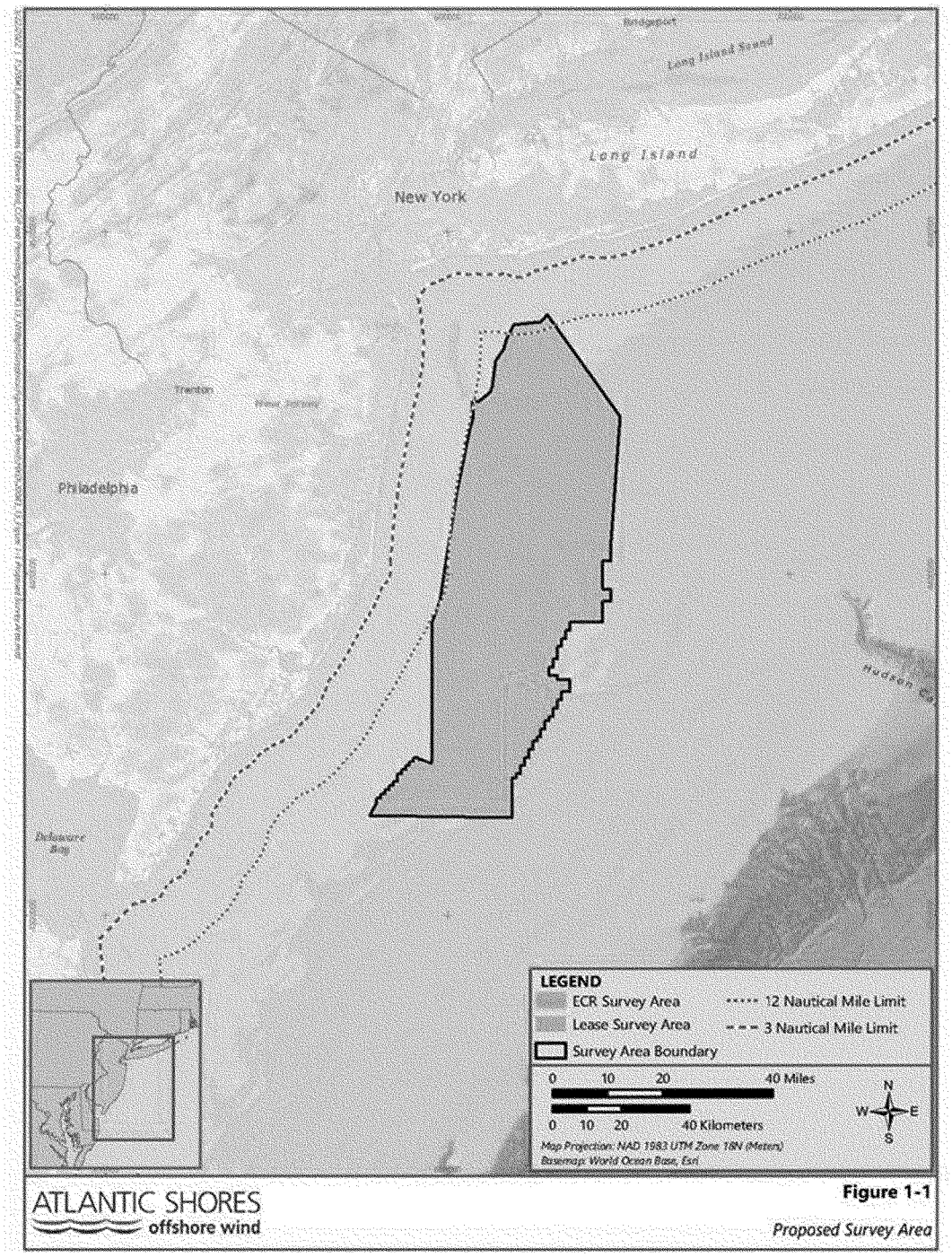


**Figure 1. Map of the Survey Area (OCS-A 0541 and ECR)**

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*Detailed Description of Specific Activity*

Atlantic Shores Bight proposes to conduct both geotechnical and HRG survey activities. The proposed geotechnical activities would include the drilling of sample boreholes, deep cone penetration tests (CPTs), and shallow CPTs. Such proposed activities have been performed before by Atlantic Shores and considerations of the impacts produced from geotechnical activities have been previously analyzed and included in the proposed 2020 **Federal Register** notice for Atlantic Shores' HRG activities (85 FR 7926; February 12, 2020). In that notification, NMFS determined that the likelihood of the proposed geotechnical surveys resulting in harassment of marine mammals was so low as to be discountable. As this information remains applicable and NMFS' determination has not changed, these activities will not be discussed further in this proposed notification.

Atlantic Shores Bight has proposed that HRG survey operations would be conducted continuously 24 hours a day. Based on 24-hour operations, the estimated total duration of the proposed activities would be approximately 360 survey days. This includes 180 days of survey activities in the Lease Survey Area and 180 days in ECR Survey Area (refer back to Table 1). As previously discussed above, this schedule includes potential downtime due to inclement weather or other project-related delays.

The HRG survey equipment to be used in the identified survey area will be similar to the HRG survey equipment used to support previous surveys conducted by Atlantic Shores and other offshore wind development projects along the Atlantic Coast. The HRG survey activities will be supported by vessels of sufficient size to accomplish the survey goals in each of the specified survey areas. There will be a maximum of three geophysical survey vessels working at any one time across the survey areas. HRG equipment will either be mounted to or towed behind the survey vessel at a typical survey speed of approximately 3.5 knots (6.5 km) per hour. The geophysical survey activities proposed by Atlantic Shores Bight would include the following:

- Depth sounding (multibeam depth sounder and single beam echosounder) to determine water depths and general bottom topography (currently estimated to range from approximately 16 feet (ft) (5 meters [m] to 131 ft [40 m] in depth);
- Magnetic intensity measurements (gradiometer) for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom;
- Seafloor imaging (side scan sonar survey) for seabed sediment classification purposes to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features;
- Shallow penetration sub-bottom profiler (pinger/chirp) to map the near surface stratigraphy (top 0 ft to 16 ft [0 m to 5 m] soils below seabed); and
- Medium penetration sub-bottom profiler (chirps/parametric profilers/sparkers) to map deeper subsurface stratigraphy as needed (soils down to 246 ft [75 m] to 328 ft [100 m] below seabed). Based upon three years of previous survey experience (*i.e.,* 2019—2021 surveys), Atlantic Shores Bight anticipates that it will operate the Applied Acoustics Dura-Spark and/or the Geo Marine Geo-Source to map deeper stratigraphy in the survey areas.
- Grab sampling to validate seabed classification using typical sample sizes between 0.1 $m^2$ and 0.2 $m^2$.

Table 2 identifies the representative survey equipment that may be used in support of planned geophysical survey activities. Operational parameters presented in Table 2 were obtained from the following sources: Crocker and Fratantonio (2016); manufacturer specifications; personal communication with manufacturers; agency correspondence; and Atlantic Shores/Atlantic Shores Bight. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Geophysical surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives. All categories of representative HRG survey equipment shown in Table 2 work with operating frequencies <180 kHz.

TABLE 2—SUMMARY OF REPRESENTATIVE EQUIPMENT SPECIFICATIONS WITH OPERATING FREQUENCIES BELOW 180 KHZ

| HRG survey equipment | Representative equipment | Operating frequency ranges (kHz) | Operational source level ($dB_{RMS}$) | Beamwidth ranges (degrees) | Typical pulse durations $RMS_{90}$ (millisecond) | Pulse repetition rate (Hz) |
|---|---|---|---|---|---|---|
| Sparker | Applied Acoustics Dura-Spark 240^ | 0.01 to 1.9 | 203 | 180 | 3.4 | 2 |
| | Geo Marine Geo-Source | 0.2 to 5 | 195 | 180 | 7.2 | 0.41 |
| CHIRPs | Edgetech 2000–DSS | 2 to 16 | 195 | 24 | 6.3 | 10 |
| | Edgetech 216 | 2 to 16 | 179 | 17, 20, 0r 24 | 10 | 10 |
| | Edgetech 424 | 4 to 24 | 180 | 71 | 4 | 2 |
| | Edgetech 512i | 0.7 to 12 | 179 | 80 | 9 | 8 |
| | Pangeosubsea Sub-Bottom ImagerTM | 4 to 12.5 | 190 | 120 | 4.5 | 44 |

^ The operational source level for the Dura-Spark 240 is assigned based on the value closest to the field operational history of the Dura-Spark 240 [operating between 500–600 J] found in Table 10 in Crocker and Fratantonio (2016), which reports a 203 $dB_{RMS}$ for 500 J source setting and 400 tips. Because Crocker and Fratantonio (2016) did not provide other source levels for the Dura-Spark 240 near the known operational range, the SIG ELC 820 @750 J at 5m depth assuming an omnidirectional beam width was considered as a proxy or comparison to the Dura-Spark 240. The corresponding 203 $dB_{RMS}$ level is considered a realistic and conservative value that aligns with the history of operations of the Dura-Spark 240 over three years of survey by Atlantic Shores.

The deployment of HRG survey equipment, including the equipment planned for use during Atlantic Shores Bight's proposed activities, produces sound in the marine environment that has the potential to result in harassment of marine mammals. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and

potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. draft 2021 U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 3—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

| Common name | Scientific name | Stock | ESA/ MMPA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| North Atlantic right whale | *Eubalaena glacialis* | Western Atlantic | E/D, Y | 368 (0; 364; 2019) [5] | 0.7 | 7.7 |
| Humpback whale | *Megaptera novaeangliae* | Gulf of Maine | -/-, Y | 1,396 (0; 1,380; 2016) | 22 | 12.15 |
| Fin whale | *Balaenoptera physalus* | Western North Atlantic | E/D, Y | 6,802 (0.24; 5,573; 2016) | 11 | 1.8 |
| Sei whale | *Balaenoptera borealis* | Nova Scotia | E/D, Y | 6,292 (1.02; 3,098; 2016) | 6.2 | 0.8 |
| Minke whale | *Balaenoptera acutorostrata* | Canadian East Coastal | -/-, N | 21,968 (0.31; 17,002; 2016) | 170 | 10.6 |
| **Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| Sperm whale | *Physeter macrocephalus* | North Atlantic | E/D, Y | 4,349 (0.28; 3,451; 2016) | 3.9 | 0 |
| Long-finned pilot whale | *Globicephala melas* | Western North Atlantic | -/-, N | 39,215 (0.3; 30,627; 2016) | 306 | 29 |
| Atlantic white-sided dolphin | *Lagenorhynchus acutus* | Western North Atlantic | -/-, N | 93,233 (0.71; 54,443; 2016) | 544 | 27 |
| Bottlenose dolphin | *Tursiops truncatus* | Western North Atlantic Offshore. | -/-, N | 62,851 (0.23; 51,914; 2016) | 519 | 28 |
| Common dolphin | *Delphinus delphis* | Western North Atlantic | -/-, N | 172,974 (0.21, 145,216, 2016) | 1,452 | 390 |
| Atlantic spotted dolphin | *Stenella frontalis* | Western North Atlantic | -/-, N | 39,921 (0.27; 32,032; 2016) | 320 | 0 |
| Risso's dolphin | *Grampus griseus* | Western North Atlantic Sock | -/-, N | 35,215 (0.19; 30,051; 2016) | 301 | 34 |
| Harbor porpoise | *Phocoena phocoena* | Gulf of Maine/Bay of Fundy | -/-, N | 95,543 (0.31; 74,034; 2016) | 851 | 164 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Harbor seal | *Phoca vitulina* | Western North Atlantic | -/-, N | 61,336 (0.08; 57,637; 2018) | 1,729 | 339 |
| Gray seal [4] | *Halichoerus grypus* | Western North Atlantic | -/-, N | 27,300 (0.22; 22,785; 2018) | 1,389 | 4,453 |

[1] *ESA status:* Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *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.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. populations only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

[5] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

As indicated above, all 15 species (with 15 managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Four marine mammal species that are listed under the ESA may be present in the survey area and are included in the take request: The North Atlantic right, fin, sei, and sperm whale. The temporal and/or spatial occurrence of several cetacean and pinniped species listed in Table 3–1 of Atlantic Shores Bight's 2022 IHA application is such that take of these species is not expected to occur either because they have very low densities in the survey area or are known to occur further offshore than the survey area. These include: The blue whale (*Balaenoptera musculus*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whale (*Mesoplodon* spp.), dwarf and pygmy sperm whale (*Kogia sima* and *Kogia breviceps*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), short-finned pilot whale (*Globicephala macrorhynchus*), striped dolphin (*Stenella coeruleoalba*), white-beaked dolphin (*Lagenorhynchus albirostris*), northern migratory stock of bottlenose dolphins, pantropical spotted dolphin (*Stenella attenuata*), hooded seal (*Cystophora cristata*), and harp seal (*Pagophilus groenlandicus*). As harassment and subsequent take of these species is not anticipated as a result of the proposed activities, these species are not analyzed or discussed further.

In addition, the Florida manatee (*Trichechus manatus;* a sub-species of the West Indian manatee) has been previously documented as an occasional visitor to the Northeast region during summer months (U.S. Fish and Wildlife Service (USFWS), 2019). However, manatees are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this document.

For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western

North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters. For humpback whales, NMFS defines stocks on the basis of feeding locations, *i.e.,* Gulf of Maine. However, references to humpback whales in this document refer to any individuals of the species that are found in the specific geographic region. Additional information on these animals can be found in Sections 3 and 4 of Atlantic Shores' IHA application, the draft 2021 SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and NMFS' website.

Below is a description of the species that have the highest likelihood of occurring in the survey area and are thus expected to potentially be taken by the proposed activities as well as further detail on the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UMEs) and important habitat areas).

*North Atlantic Right Whale*

The North Atlantic right whale (NARW) ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2021). Surveys identify seven areas in which NARWs congregate seasonally, including north and east of the proposed survey area in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2020). In the late fall months (*e.g.,* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. Migrating NARWs have been acoustically detected in the New York Bight from February to May, likely migrating north to their feeding grounds (Biedron *et al.,* 2009). However, recent research indicates that our understanding of NARW movement patterns remains incomplete (Davis *et al.,* 2017). For example, there has been an apparent shift in habitat use patterns (Davis *et al.,* 2017), which includes an increased use of Cape Cod Bay (Mayo *et al.,* 2018) and decreased use of the Great South Channel. A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Observations of NARWs feeding in winter in the Mid-Atlantic region and recorded off the coast of New Jersey in all months of the year (Whitt *et al.,* 2013) support the theory that not all NARWs undergo consistent annual migrations. However, given that Atlantic Shores Bight's surveys would be concentrated offshore New Jersey and New York, any right whales in the vicinity of the survey area are expected to be transient and would most likely migrate through the region.

The western North Atlantic population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.,* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.,* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.,* 2017). On average, North Atlantic right whale calving rates are estimated to be roughly half that of southern right whales (*Eubalaena australis*) (Pace *et al.,* 2017), which are increasing in abundance (NMFS, 2015). In 2018, no new NARW calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Eighteen right whale calves were documented in 2021. As of May 9, 2022 and the writing of this proposed Notification, fifteen NARW calves were documented to have been born during this calving season. Presently, the best available population estimate for NARWs is 386 per the draft 2021 SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*). As noted in footnote to Table 2, NMFS has acknowledged that the population estimate of North Atlantic right whales is now under 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). However, NMFS has determined that this change in abundance estimate would 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 Atlantic Shores Bight's survey activities. The status and trends of the NARW population remain unchanged.

NMFS has designated two critical habitat areas for the NARW under the ESA: The Gulf of Atlantic Shores Bight Maine/Georges Bank region, and the southeast calving grounds from North Carolina to Florida. Two additional critical habitat areas in Canadian waters, Grand Manan Basin and Roseway Basin, were identified in Canada's final recovery strategy for the NARW (Brown *et al.,* 2009).

The proposed survey area is part of a migratory corridor Biologically Important Area (BIA) for NARWs (effective March-April and November-December) that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break. This important migratory area is approximately 269,488 km$^2$ in size (compared with the approximately 11,134.6 km$^2$ of total estimated Level B harassment ensonified area associated with the 360 planned survey days) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts. NMFS' regulations at 50 CFR 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for North Atlantic right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. A portion of one SMA, which occurs off the ports of New York and New Jersey, overlaps spatially with a section of the proposed survey area, as shown by Figure 4–1 in the application. The SMA is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 knots) for all vessels greater than 65 ft. (19.8 m).

Historically, there have been several documented sightings of NARWs off the coast of New Jersey and surrounding waters (CETAP, 1982; Knowlton and Kraus, 2001; Biedron *et al.,* 2009). Satellite-monitored radio tags on a NARW cow and calf documented the migratory route of this pair from the Bay of Fundy to New Jersey and back during a six-week period (Knowlton *et al.,* 2002). A few NARW sightings were documented west of the south of the Lease Survey Area near the Delaware Bay in October, December, May, and July (Knowlton *et al.,* 2002). Other visual recordings of NARWs were found in New Jersey waters during the spring and fall seasons (CETAP, 1982). It has been noted, however, that NARW sightings in several traditional feeding habitats has been declining, supporting speculation that a shift in NARW habitat usage may be occurring (Pettis *et al.,* 2017).

Elevated NARW mortalities have occurred since June 7, 2017, along the U.S. and Canadian coasts. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 15 of the mortalities. As of May 9, 2022, a total of 34 confirmed dead stranded whales (21 in Canada; 13 in the United States) have been documented. The cumulative total number of animals in the NARW UME has been updated to 50 individuals to include both the confirmed mortalities (dead stranded or floaters) (n=34) and seriously injured free-swimming whales (n=16) to better reflect the confirmed number of whales likely removed from the population during the UME and more accurately reflect the population impacts. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017–2021-north-atlantic-right-whale-unusual-mortality-event.*

*Humpback Whale*

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS delineated 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whales that is expected to occur in the survey area. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015). Whales occurring in the survey area are considered to be from the West Indies DPS, but are not necessarily from the Gulf of Maine feeding population managed as a stock by NMFS.

Humpback whales are known to occur regularly throughout the Mid-Atlantic Bight, including New Jersey waters (Geo-Marine, 2010). The occurrence of this population is strongly seasonal with most observations occurring during the spring and fall, with a peak from April to June (Geo-Marine, 2010; Curtice *et al.,* 2019). Group size tends to be single animals or pairs with a mean distance from shore of 11.4 mi (18.4 km) and a mean depth of 67 ft (20.5 m) (Geo-Marine, 2010). Acoustic data indicate that this species may be present within the surrounding areas year-round, with the highest rates of acoustic detections in adjacent waters in winter and spring (Kraus *et al.,* 2016). Since acoustic detections do not differentiate between individuals, detections on multiple days could be the same or different individuals.

Humpback whales utilize the mid-Atlantic region mainly as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.,* 2007a; Waring *et al.,* 2007b). However, Barco *et al.,* (2002) suggests that the mid-Atlantic region also represents a supplemental winter-feeding ground for humpbacks. Humpback whales belonging to the West Indies DPS typically feed in the waters between the Gulf of Maine and Newfoundland during spring, summer, and fall, but they have been observed feeding in other areas, such as off the coast of New York (Sieswerda *et al.,* 2015). A biologically important area (BIA) for humpback whales for feeding from March to December has been designated in the Gulf of Maine, Stellwagen Bank, and the Great South Channel; all of which are north of the survey area (LaBrecque *et al.,* 2015).

Despite the seasonality of occurrence, there have been some wintertime humpback sightings in coastal waters of the eastern U.S., including 46 sightings of humpbacks in the New York-New Jersey Harbor Estuary documented between 2011 and 2016 (Brown *et al.,* 2017). There have also been documented strandings from the New Jersey coast (Barco *et al.,* 2002). Humpback whales have been observed feeding off the coast of New Jersey with juveniles exhibiting feeding behavior south of the study area near the mouth of the Chesapeake Bay (Swingle *et al.,* 2006). Additionally, a cow-calf pair was seen north of the study area boundary supporting the theory that the nearshore waters off of New Jersey may provide important feeding and nursery habitats for humpback whales (Geo-Marine, 2010). In addition, recent research by King *et al.* (2021) has demonstrated a higher occurrence and foraging use of the New York Bight area by humpback whales than previously known.

The most significant anthropogenic causes of mortality of humpback whales include incidental fishery entanglements, responsible for roughly eight whale mortalities, and vessel collisions, responsible for four mortalities both on average annually from 2013 to 2017 (Hayes *et al.,* 2020). Furthermore, King *et al.* (2021) highlights important concerns for humpback whales found specifically in the nearshore environment (<10 km from shore) from various anthropogenic impacts.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. A total of 159 humpback whale mortalities have occurred along the east coast of the U.S. since 2016 with 4 mortalities occurring in 2022 (NOAA Fisheries 2022a). Partial or full necropsy examinations have been conducted on approximately half of the 159 known cases (as of May 6, 2022). Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. 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. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

*Fin Whale*

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Hayes *et al.,* 2020). There is evidence that fin whales are present year-round throughout much of the U.S. EEZ north of 35° N, but the density of individuals in any one area changes seasonally (NOAA Fisheries 2022b, Hayes *et al.,* 2020). Fin whales have a high multi-seasonal relative abundance in U.S. Mid-Atlantic waters, and surrounding areas. During the Geo-Marine (2010) surveys, most of the sightings off southern New Jersey were observed during winter and summer. There were mixed aggregations of feeding humpbacks during fin whale sightings, and with the presence of known prey species, it is possible that fin whales use the area off southern New Jersey to feed (Geo-Marine, 2010). Within the southern New Jersey study area, group size ranged from one to four animals with a mean distance from shore of 20 km and a mean water depth of 21.5 m (Geo-Marine, 2010). Acoustic data also indicate that this species is present off New Jersey in all seasons (CETAP, 1982).

While the typical feeding grounds of fin whales include the Gulf of Maine and the waters surrounding New England, their mating, calving, and general wintering areas are largely unknown (Hain *et al.,* 1992; Hayes *et al.,* 2020). Recordings from Massachusetts Bay, New York Bight, and deep-ocean areas have detected some level of fin whale singing from September through June (Watkins *et al.,* 1987; Clark and Gagnon, 2002; Morano *et al.,* 2012). These acoustic observations from both coastal and deep-ocean regions support the conclusion that male fin whales are broadly distributed throughout the western North Atlantic for most of the year (Hayes *et al.,* 2020). Based on an analysis of neonate stranding data, Hain *et al.* (1992) suggest that calving occurs during October to January in latitudes of the U.S. Mid-Atlantic region.

The fin whale is federally listed under the ESA as an endangered marine mammal and are designated as a strategic stock under the MMPA due to their endangered status under the ESA, uncertain human-caused mortality, and incomplete survey coverage of the stock's defined range. The main threats to fin whales are fishery interactions and vessel collisions (Hayes *et al.,* 2021). A fin whale feeding BIA is located northeast of the study area near Rhode Island Sound (LaBrecque *et al.,* 2015).

*Sei Whale*

Sei whales present within the study area belong to the Nova Scotia stock, which occurs within the U.S. Atlantic EEZ and ranges along the continental shelf waters of the northeastern U.S. to Newfoundland (Hayes *et al.,* 2020). The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank, an area also identified as a sei whale feeding BIA (LaBrecque *et al.,* 2015). Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Hayes *et al.,* 2020). Sei whales occur in shallower waters to feed. The wintering habitat for sei whales remains largely unknown (Hayes *et al.,* 2020).

There has been little detection of sei whales within New Jersey and surrounding waters (Kenney *et al.,* 1985; Geo-Marine, 2010). According to the New Jersey Endangered and Nongame Species Program (NJ ENSP), there have been no sightings of this species documented within state waters. On the continental shelf offshore of New Jersey, sei whales have been detected in spring. Approximately 200 sei whale vocalizations were detected in mid-September 2006 on the mid-Atlantic continental shelf, in waters ranging from 13 m to 80 m in depth (Newhall *et al.,* 2009).

Sei whales are listed as endangered under the ESA, and the Nova Scotia stock is considered strategic and depleted under the MMPA. The main threats to this stock are interactions with fisheries and vessel collisions. Impacts from environmental contaminants also present a concern as well as potential spatial shifts in distribution related to climate change (Hayes *et al.,* 2020; Sousa *et al.,* 2019).

*Minke Whale*

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Hayes *et al.,* 2021). This species generally occupies waters less than 100-m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution on the continental shelf and in deeper off-shelf waters, in which spring to fall are times of relatively widespread and common acoustic occurrence (*e.g.,* Risch *et al.,* 2013). September through April is the period of highest acoustic occurrence in deep-ocean waters throughout most of the western North Atlantic (Clark and Gagnon, 2002; Risch *et al.,* 2014).

Minke whales are primarily documented near the continental shelf offshore of New Jersey (Schwartz, 1962; Mead, 1975; Potter, 1979; Rowlett, 1980; Potter, 1984; Winn *et al.,* 1985, DoN, 2005). Acoustic recordings of minke whales have been detected north of the Lease survey area within the New York Bight during the fall (August to December) and winter (February to May) (Biedron *et al.,* 2009). Minke whales are most common off New Jersey in coastal waters in the spring and early summer as they move north to feeding ground in New England and fall as they migrate south (Geo-Marine, 2010). Geo-Marine (2010) observed four minke whales near the survey area and surrounding waters during winter and spring. A juvenile minke whale was sighted northwest of the Lease survey area near the New York Harbor in April 2007 (Hamazaki, 2002). Minke whale sightings off the coast of New Jersey were within water depths of 36 ft to 79 ft (11 m to 24 m) and temperatures ranging from 5.4 to 11.5 °C (47 °F) (Geo-Marine, 2010).

Based on habitat information and predictive habitat models, Hamazaki (2002) determined that minke whales are likely to occur in nearshore waters off New Jersey.

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 122 strandings (as of May 9, 2022). This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

*Sperm Whale*

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Hayes *et al.,* 2020). The basic social unit of the sperm whale appears to be a mixed school of adult females, their calves and some juveniles of both sexes, normally numbering 20–40 animals. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead, 2002). In contrast, males migrate to the Polar Regions to feed and move among populations to breed (Whitehead, 2002; Englehaupt *et al.,* 2009).

Within U.S. Atlantic EEZ waters, sperm whales appear to exhibit seasonal movement patterns (CETAP, 1982, Scott and Sadove, 1997). In winter, sperm whales are concentrated east and northeast of Cape Hatteras. This distribution shifts northward in spring, when sperm whales are most abundant in the central portion of the Mid-Atlantic Bight to the southern region of Georges Bank. In summer, this distribution continues to move northward, including the area east and north of Georges Bank and the continental shelf to the Mid-Atlantic region. In fall, sperm whales are most abundant on the continental shelf to the south of New England and remain abundant along the continental shelf edge in the Mid-Atlantic Bight (Hayes *et al.,* 2020).

No sperm whale sightings were made during the Ocean Wind Power Ecological Baseline Study off New Jersey (Geo-Marine, 2010); however, approximately nine individuals were

observed offshore of New Jersey near the OCS during shipboard surveys in summer 2011 (Palka, 2012). There is substantial information on sperm whale occurrence offshore of New Jersey, exclusively near the OCS (CETAP, 1982; Waring *et al.,* 2007a) and are therefore likely to be present within the survey area.

Sperm whales are listed as engendered under the ESA, and the North Atlantic stock is considered strategic under the MMPA. The greatest threats to sperm whales include ship strikes ((McGillivary *et al.,* 2009; Carrillo and Ritter, 2010), anthropogenic sound (Nowacek *et al.,* 2015), and the potential for climate change to influence variations in spatial distribution and abundance of prey (Hayes *et al.,* 2020).

*Long-Finned Pilot Whale*

Long-finned pilot whales are found from North Carolina to North Africa and the Mediterranean, and north to Iceland, Greenland and the Barents Sea (Hayes *et al.,* 2020). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter, early spring, and in late spring, long-finned pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (CETAP, 1982; Hayes *et al.,* 2020).

Long-finned pilot whales have been known to occur offshore of New Jersey (Abend and Smith, 1999; Tyler, 2008; Hayes *et al.,* 2020). It is likely that the species can be found along the shelf break between New Jersey and Georges Bank, however, there is limited information on the spatial and temporal distribution of long-finned pilot whales near the survey area (Hayes *et al.,* 2020). For instance, pilot whales were not detected during the Geo-Marine (2010) study. The limited information of the presence of long-finned pilot whales within the survey area is likely based on the habitat preference and the pelagic nature of pilot whales (Hayes *et al.,* 2020) that would suggest pilot whales have a rare presence in New Jersey waters (Bowers-Altman and NJ Division of Fish and Wildlife, 2009).

*Bottlenose Dolphin*

There are two distinct bottlenose dolphin ecotypes in the western North Atlantic: coastal and offshore (Hersh and Duffield, 1990; Mead and Potter, 1995; Curry and Smith, 1997; Rosel *et al.,* 2009). The coastal ecotype is morphologically and genetically distinct from the larger, more robust offshore ecotype that occupies habitats further offshore. The offshore ecotype is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys (CETAP, 1982; Kenney, 1990). North of Cape Hatteras, there is separation of the two ecotypes across bathymetry during summer months. Based upon genetic analyses, bottlenose dolphins concentrated close to shore were of the coastal ecotype, while those in waters >25 m depth were from the offshore ecotype (Garrison *et al.,* 2003).

Off the coast of New Jersey, bottlenose dolphins, likely from the coastal migratory and offshore stocks, can occur throughout the year and were the most frequently detected species in an ecological baseline survey conducted in coastal New Jersey waters (Geo-Marine, 2010; BOEM, 2012). Seasonal movements of bottlenose dolphins north along the coast during the warmer months are likely directed by the presence of prey (Barco *et al.,* 1999; Hayes *et al.,* 2018). Targeted prey species vary by area, season, and stock; however, sciaenid fishes, such as Atlantic croaker and weakfish, and squid, are common (Gannon and Waples, 2004). Bottlenose dolphins were the most frequently observed species during the Geo-Marine (2010) study period. A total of 319 bottlenose dolphins with group sizes averaging at 15.3 animals were detected offshore of New Jersey (Geo-Marine 2010). Several other monitoring efforts recorded sightings of this species during geophysical surveys in the potential windfarm sites (including the survey area) southeast of Atlantic City (Geo-Marine 2009a, 2009b). Bottlenose dolphins have been present annually near and offshore of New Jersey, with greater sightings during spring and summer months (Geo-Marine, 2010). Given the northern migratory coastal stock propensity to be found shallower than the 65.6 ft (20 m) depth isobath between Assateague, Virginia and Long Island, New York (Reeves *et al.,* 2002; Hayes *et al.,* 2020), the northern migratory coastal stock is not expected to occur in the survey area which is located beyond the 65.6 ft (20 m) depth isobath. Only the offshore ecotype is expected to occur within the study area.

*Common Dolphin*

Common dolphins within the U.S. Atlantic EEZ belong to the Western North Atlantic stock, generally occurring from Cape Hatteras to the Scotian Shelf (Hayes *et al.,* 2021). Common dolphins are a highly seasonal, migratory species. Within the U.S. Atlantic EEZ, this species is distributed along the continental shelf and typically associated with Gulf Stream features (CETAP, 1982; Selzer and Payne, 1988; Hamazaki, 2002; Hayes *et al.,* 2021). Common dolphins occur from Cape Hatteras northeast to Georges Bank (35° to 42° N) during mid-January to May and move as far north as the Scotian Shelf from mid-summer to fall (Selzer and Payne, 1988). Migration onto the Scotian Shelf and continental shelf off Newfoundland occurs when water temperatures exceed 51.8 °F (11 °Celsius) (Sergeant *et al.,* 1970, Gowans and Whitehead 1995). Breeding usually takes place between June and September (Hayes *et al.,* 2019).

There have been numerous sightings of common dolphins along the New Jersey coastline (Ulmer, 1981; Hamazaki, 2002). Generally, this species has been documented 20 nm (>37 km) near the shelf break within the months of February, May, and July, however, they have been sighted year-round (Geo-Marine 2010). Geo-Marine (2010) recorded a total of 32 common dolphin sightings off the coast of New Jersey in waters ranging from 33 ft to 102 ft (10 m to 21 m). Approximately 26% of the shipboard sightings of common dolphins were calves (Geo-Marine, 2010) study. Common dolphins are regularly observed in large groups consisting of hundreds of animals (NOAA Fisheries, 2022a). Multiple strandings of the common dolphins have occurred within the New Jersey coasts across multiple seasons (Hayes *et al.,* 2021).

*Atlantic White-Sided Dolphin*

Atlantic white-sided dolphins observed off the U.S. Atlantic coast are part of the Western North Atlantic Stock (Hayes *et al.,* 2020). This stock inhabits waters from central West Greenland to North Carolina (about 35° N), primarily in continental shelf waters to the 328 ft (100 m) depth contour (Doksæter *et al.,* 2008). Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). From January to May, low numbers of Atlantic white-sided dolphins are found from Georges Bank to Jeffrey's Ledge off New Hampshire. From June through September, large numbers of Atlantic white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, they occur at intermediate densities from southern Georges Bank to the southern Gulf of Maine (Payne and Heinemann, 1990).

Atlantic white-sided dolphins were not observed in the Geo-Marine (2010) study off New Jersey, suggesting that Atlantic white-sided dolphins occur infrequently in the survey area and surrounding areas. The NJ ENSP noted

that there is little information on the sightings of this species and more information is needed to accurately assess the abundance of Atlantic white-sided dolphins within New Jersey waters (see CETAP, 1982; Selzer and Payne, 1988; Waring *et al.,* 2007a; Bowers-Altman and NJ Division of Fish and Wildlife, 2009). A shallow water (~188 ft [36 m]) marine mammal survey off of New Jersey found no presence of Atlantic white-sided dolphins across each season (Kenney *et al.,* 1985), which further implies that it is unlikely for this species to be present within the survey area. Although regional surveys found very limited presence of this species near the survey area, data adapted from Roberts *et al.* (2016b; 2017; 2018) via the MDAT (Curtice *et al.,* 2019) indicate abundance in this region increases in the spring so although unlikely, Atlantic white-sided dolphins may be present during HRG activities.

*Atlantic Spotted Dolphin*

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Hayes *et al.,* 2020). The Western North Atlantic stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Hayes *et al.,* 2020). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and usually occurring inside or near the 200-m isobaths (Hayes *et al.,* 2020). Though the waters off the coast of New Jersey are located within the distributional range of the Atlantic spotted dolphin, the species was not observed in the Geo-marine (2010) study. It has been suggested that the species may move inshore seasonally during the spring, but data to support this theory is limited (Caldwell and Caldwell, 1966; Fritts *et al.,* 1983).

*Risso's Dolphin*

Risso's dolphins occur worldwide in both tropical and temperate waters (Jefferson *et al.,* 2008, Jefferson *et al.,* 2014). Risso's dolphins within the U.S. Atlantic EEZ are part of the Western North Atlantic stock. The Western North Atlantic stock of Risso's dolphins inhabits waters from Florida to eastern Newfoundland (Leatherwood *et al.,* 1976; Baird and Stacey, 1991). During spring, summer, and fall, Risso's dolphins are distributed along the continental shelf edge from Cape Hatteras northward to Georges Bank (CETAP, 1982; Payne *et al.,* 1984). During the winter, the distribution extends outward into oceanic waters (Payne *et al.,* 1984) within the Mid-Atlantic Bight, however, little is known about movement and migration patterns and Risso's dolphins are infrequently observed in continental shelf waters.

There is limited data regarding Risso's dolphins offshore of New Jersey. Increased strandings of this species were recorded from 2003 to 2004 on New York, New Jersey, and Delaware coasts (DiGiovanni *et al.,* 2005). This species has also been primarily documented on the shelf break off of New Jersey (DiGiovanni *et al.,* 2005). There were no Risso's dolphins documented during the Geo-Marine (2010) study, however, one Risso's dolphin observation was recorded during Atlantic Shores 2020 geophysical campaign in the vicinity of the survey area.

*Harbor Porpoise*

The harbor porpoise occupies U.S. and Canadian waters. During summer (July to September), harbor porpoises are generally concentrated along the continental shelf within the northern Gulf of Maine, southern Bay of Fundy region, and around the southern tip of Nova Scotia, generally in waters less than 150 m deep (Gaskin, 1977; Kraus *et al.,* 1983; Palka, 1995). During fall (October to December) and spring (April to June), they are more widely dispersed from New Jersey to Maine with lower densities farther north and south. In winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina with lower densities found in waters off New York to New Brunswick, Canada (Hayes *et al.,* 2020).

There are four distinct populations of harbor porpoise in the western Atlantic: Gulf of Maine/Bay of Fundy, Gulf of St. Lawrence, Newfoundland, and Greenland (Gaskin, 1984, 1992; Hayes *et al.,* 2020). Harbor porpoises observed within the U.S. Atlantic EEZ are considered part of the Gulf of Maine/Bay of Fundy stock. Harbor porpoises are a frequently sighted cetacean offshore of New Jersey (Geo-Marine, 2010). During the Geo-Marine (2010) study off New Jersey, 51 harbor porpoise sightings were documented approximately 0.8 to 19.8 nm (1.5 to 36.6 km) from shore. These sightings were primarily during winter months (February to March). It is therefore likely that this marine mammal will be present within the survey area.

The main threat to harbor porpoises is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries (Hayes *et al.,* 2020).

*Harbor Seal*

Harbor seals are found throughout coastal waters of the Atlantic Ocean and adjoining seas above 30° N (Hayes *et al.,* 2020). In the western North Atlantic, they are distributed from eastern Canada to southern New England and New York, and occasionally as far south as the Carolinas (Payne and Selzer, 1989). Harbor seals are year-round inhabitants of the coastal waters of eastern Canada and Maine (Richardson and Rough, 1993), and occur seasonally from southern New England to New Jersey between September and late May (Schneider and Payne, 1983; Barlas, 1999; Schroeder, 2000). The western North Atlantic stock may occupy southern waters of the Mid-Atlantic Bight during seasonal migrations from the Bay of Fundy in the late autumn and winter (Palka *et al.,* 2017). A general southward movement from the Bay of Fundy to southern New England occurs in fall and early winter (Rosenfeld *et al.,* 1988, Whitman and Payne, 1990, Barlas 1999). A northward movement from southern New England to Maine and eastern Canada takes place prior to the pupping season, which occurs from mid-May through June along the Maine coast (Richardson, 1976; Wilson, 1978; Whitman and Payne, 1990; Kenney, 1994). Geo-Marine (2010) observed one harbor seal offshore of New Jersey during their survey effort.

In addition to coastal waters, harbor seals use terrestrial habitat as haul-out sites throughout the year, but primarily during the pupping and molting periods, which occur from late spring to late summer in the northern portion of their range. There are three major haul-out sites along the New Jersey coast, located in Great Bay, Sandy Hook, and Barnegat Inlet (CWFNJ, 2015).

*Gray Seal*

Gray seals are the second most common pinniped along the U.S. Atlantic coast (Jefferson *et al.,* 2008). Gray seals in the survey area belong to the Western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador, and is centered at Sable Island, Nova Scotia (Davies, 1957; Mansfield, 1966; Katona *et al.,* 1993). This species inhabits temperate and sub-arctic waters and lives on remote, exposed islands, shoals, and unstable sandbars (Jefferson *et al.,* 2008). Gray seals range from Canada to New Jersey; however, stranding records as far south as Cape Hatteras (Gilbert *et al.,* 2005) have been recorded.

In U.S. waters, gray seals primarily pup at four established colonies: Muskeget and Monomoy islands in Massachusetts, and Green and Seal Islands in Maine. Since 2010, pupping has also been observed at Noman's Island in Massachusetts and Wooden Ball and Matinicus Rock in Maine (Hayes *et al.,* 2020). Although white-coated pups have stranded on eastern Long Island beaches in New York, no pupping colonies have been detected in that region. Following the breeding season, gray seals may spend several weeks ashore in late spring and early summer while undergoing a yearly molt.

Geo-Marine (2010) did not observe gray seals offshore of New Jersey. However, the Marine Mammal Stranding Center (2022) documented 25 gray seal strandings in New Jersey in 2019. Other reported sightings of gray seal in waters off of New Jersey were found as bycatch in gillnets (Hatch and Orphanides, 2017; Orphanides, 2019). Gray seals are less likely than harbor seals to occur around the survey area (Hayes *et al.,* 2020).

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Ice seals (harp and hooded seals) have also started stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. 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 other factors that may be involved in this UME. Presently, this UME is non-active and is pending closure by NMFS. Information on this UME is available online at: *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. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

## Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section, later in this document, includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals may or may not impact marine mammal species or stocks.

*Background on Active Acoustic Sound Sources and Acoustic Terminology*

This subsection provides relevant technical background information on sound, the characteristics of certain sound types, and the metrics used the proposed activity. The focused discussion also includes analysis of the potential effects of the specified activity on marine mammals. For general information on sound and its interaction with the marine environment, please

see, *e.g.,* Au and Hastings (2008); Richardson *et al.,* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and higher frequency sounds typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude. Therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1-m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu Pa^2$ -s) represents the total energy in a stated frequency band over a stated time interval or event and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be directed either in a single beam or in multiple beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. Many sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because each sound type has differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as the signal moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or

prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Sparkers produce pulsed signals with energy in the frequency ranges specified in Table 2. The amplitude of the acoustic wave emitted from sparker sources is equal in all directions (*i.e.,* omnidirectional), while other sources planned for use during the proposed surveys have some degree of directionality to the beam, as specified in Table 2. Other sources planned for use during the proposed survey activity (*e.g.,* CHIRPs) should be considered non-pulsed, intermittent sources.

*Summary on Specific Potential Effects of Acoustic Sound Sources*

Underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold recovers over time (Southall *et al.,* 2007).

Animals in the vicinity of Atlantic Shores Bight's proposed HRG survey activity are unlikely to incur even TTS due to the characteristics of the sound sources, which include relatively low source levels (176 to 205 dB re 1 µPa m), and generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Regarding instantaneous exposure, high-frequency cetacean species (*e.g.,* harbor porpoises) have the greatest sensitivity to potential TTS, and individuals would have to make an approach within 5 m of the vessel (the estimated isopleth distance to the peak threshold). Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid loud sound sources rather than approach within close proximity to the vessel, and also remain within this distance to the vessel operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of some of the HRG survey devices planned for use (Table 2) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals given the directionality of the signals for most HRG survey equipment types planned for use (Table 2) and the brief period when an individual mammal is likely to be exposed.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses. In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare. An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and

behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have long been equated with stress. The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. In general, there is little data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. The available data does not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007). There is currently no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory HRG and geotechnical survey activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly.

*Ship Strikes*

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes often involve commercial shipping vessels, which are generally larger (*e.g.,* 40,000 ton container ship) and less able to notice collisions, or potential collisions, than smaller geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). Atlantic Shores Bight vessels planned for use in the proposed activities range in length from 40 ft (12.2 m) to 292 ft (89 m). Vessel speed while towing gear will be approximately 3.5 knots. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

*Marine Mammal Habitat*

The HRG survey equipment will not contact the seafloor and does not represent a source of pollution. We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. Any avoidance of the area on the part of marine mammal prey would be expected to be short term and temporary.

Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Impacts on marine mammal habitat from the proposed activities will be temporary, insignificant, and discountable.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG acoustic sources. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. Level A harassment (injury) is considered unlikely based on the characteristics of the signals produced by the acoustic sources planned for use. Implementation of required mitigation detailed in the Proposed Mitigation section below further reduces the potential for Level A harassment.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

*Acoustic Thresholds*

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound

above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for the impulsive sources (*i.e.,* sparkers) and non-impulsive, intermittent sources (*e.g.,* CHIRPs) evaluated here for Atlantic Shores Bight's proposed activity.

Atlantic Shores Bight's proposed HRG surveys include the use of non-impulsive, intermittent (CHIRPs) and impulsive (sparkers) sources, and therefore the RMS SPL threshold of 160 dB re 1 μPa is applicable.

*Level A harassment*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (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). Atlantic Shores Bight's proposed HRG survey activities include the use of impulsive (sparkers) and non-impulsive (CHIRPs) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group | PTS onset thresholds * (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | *Cell 1:* $L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,\ LF,24h}$: 183 dB | *Cell 2:* $L_{E,p,\ LF,24h}$: 199 dB. |
| Mid-Frequency (MF) Cetaceans | *Cell 3:* $L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,\ MF,24h}$: 185 dB | *Cell 4:* $L_{E,p,\ MF,24h}$: 198 dB. |
| High-Frequency (HF) Cetaceans | *Cell 5:* $L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB | *Cell 6:* $L_{E,p,\ HF,24h}$: 173 dB. |
| Phocid Pinnipeds (PW) (Underwater) | *Cell 7:* $L_{p,0\text{-pk.flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB | *Cell 8:* $L_{E,p,PW,24h}$: 201 dB. |
| Otariid Pinnipeds (OW) (Underwater) | *Cell 9:* $L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB | *Cell 10:* $L_{E,p,OW,24h}$: 219 dB. |

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

**Note:** Peak sound pressure level ($L_{p,0\text{-pk}}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

The 2020 **Federal Register** notice of proposed IHA for Atlantic Shores' HRG surveys (85 FR 7926; February 12, 2020) previously analyzed the potential for Level A harassment (refer to Table 5 in that notification and additional discussion therein).

Similar to the past IHAs issued to Atlantic Shores, the proposed activities for 2022–2023 include the use of impulsive (*i.e.,* sparkers) and non-impulsive (*e.g.,* CHIRPs) sources, and Atlantic Shores Bight did not request authorization of take by Level A harassment. The locations, species, survey durations, equipment used, and source levels proposed are all of a similar scope previously analyzed for Atlantic Shores' surveys. NMFS concluded for past surveys that Level A harassment was not a reasonably likely outcome for marine mammals exposed to noise through use of similar impulsive and non-impulsive HRG sources, therefore, the same conclusion applies to the sources proposed for use here. Therefore, the potential for Level A harassment is not evaluated further in this document and no take by Level A harassment is proposed for authorization by NMFS. [Note that the proposed mitigation measures would further reduce the potential for Level A harassment.]

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 2).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available scientific information on source levels associated

with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases where 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) may be used instead. Table 2 shows the HRG equipment types that may be used during the proposed surveys and the source levels associated with those HRG equipment types. The computations and results from the Level B harassment ensonified area analysis are displayed in Table 6.

TABLE 6—INFORMATION INPUTS AND RESULTING DISTANCES TO LEVEL B THRESHOLD (m) FOR REPRESENTATIVE ACOUSTIC SOURCES

| Source information | | Input values into spreadsheet | | | | Computed values | |
|---|---|---|---|---|---|---|---|
| HRG survey equipment type | Representative equipment | Operating frequencies ranges (kHz) | Operational source level ranges ($dB_{RMS}$) | Beamwidth ranges (degree) | Water depth (m) | Slant threshold range to Level B threshold (m) | Horizontal threshold range to Level B threshold (m) |
| Sparker | SIG ELC 820 sparker at 750J* | 0.01 | 203 | 180 | 5 | 141 | 141 |
| | Geo Marine Survey System 2D SUHRS | 0.2 | 195 | 180 | 5 | 56 | 56 |
| CHIRPs | Edgetech 2000–DSS | 2 | 195 | 24 | 5 | 56 | 1.1 |
| | Edgetech 216 | 2 | 179 | 24 | 5 | 9 | 1.1 |
| | Edgetech 424 | 4 | 180 | 71 | 10 | 10 | 5.8 |
| | Edgetech 512i | 0.7 | 179 | 80 | 10 | 9 | 5.8 |
| | Pangeosubsea Sub-Bottom ImagerTM | 4 | 190 | 120 | 5 | 32 | 8.7 |

*Used as a proxy for the Applied Acoustics Dura-Spark 240 because the specific energy setting isn't described in Crocker and Franantonio (2016).

Results of modeling using the methodology described and shown above indicated that, of the HRG survey equipment planned for use by Atlantic Shores Bight that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics Dura-Spark 240 would produce the largest Level B harassment isopleth (141 m; please refer to Table 6).

Although Atlantic Shores Bight does not expect to use sparker sources on all planned survey days and during the entire duration that surveys are likely to occur, Atlantic Shores Bight proposes to assume for purposes of analysis that the sparker would be used on all survey days. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

The Level B harassment isopleth distance of 141 m generated for the Dura-Spark 240 was used as the ''r'' input to calculate the zone of influence (ZOI) around the survey vessel, which is the maximum ensonified area around the sound source over a 24 hour period. The following formula for a mobile source was used to calculate the ZOI:

Mobile Source ZOI = (Distance/day × 2r) + πr2

Where: *Distance/day* = the maximum distance a survey vessel could travel in a 24-hour period; *r* = the maximum radial distance from a given sound source to the NOAA Level A or Level B harassment thresholds. For the purpose of the Atlantic Shores Bight HRG surveys, the total *distance/day* has been estimated to be approximately 55.0 km in the survey area. Based upon a daily survey distance of 55 km/day and a maximum radial distance to the Level B harassment threshold (141 m, see Tables 6, 7), an area of 15.57 $km^2$ would be ensonified to the Level B harassment threshold across both survey sites during Atlantic Shores Bight's proposed surveys (Table 7).

TABLE 7—MAXIMUM HRG SURVEY AREA DISTANCES AND DAILY ENSONIFIED AREAS

| Survey area | Number of active survey days | Survey distances per day in km | Maximum radial distance (r) in m | Calculated Isopleth per day ($km^2$) | Total annual ensonified area ($km^2$) |
|---|---|---|---|---|---|
| Lease Area | 180 | 55 | 141 | 15.57 | 2,802.6 |
| ECR Survey Area | 180 | ..... | ..... | ..... | 2,802.6 |

As described above, this is a 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 is not expected to ultimately occur.

*Marine Mammal Occurrence*

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–2019 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.,* 2016a; Curtice *et al.,* 2018), represent the best available scientific information regarding marine mammal densities in the survey area. More recently, these data have been updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.,* 2016b, 2017, 2018, 2020).

The density data presented by Roberts *et al.,* (2016b, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from eight physiographic and 16

dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016a). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the survey area (animals/km$^2$) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016b, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For the exposure analysis, density data from Roberts *et al.,* (2016b, 2017, 2018, 2020) were mapped using a geographic information system (GIS). For each of the survey areas (*i.e.,* Lease Survey Area, ECR Survey Area), the densities of each species as reported by Roberts *et al.* (2016b, 2017, 2018, 2020) were averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. The seasons were defined as follows: Spring (March–May); summer (June–August); fall (September–November); winter (December–February). To be conservative, the greatest seasonal density calculated for each species was then carried forward in the exposure analysis. Estimated seasonal densities (animals per km$^2$) of all marine mammal species that may be taken by the proposed survey, for all survey areas are shown in Tables C–1, C–2 and C–3 in Appendix C of Atlantic Shores Bight's IHA application. The maximum seasonal density values used to estimate take numbers are shown in Table 9 below. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2016b, 2017, 2018, 2020) models provide results at the genus or guild level.

For bottlenose dolphin densities, Roberts et al. (2016b, 2017, 2018) does not differentiate by individual stock. As the northern migratory coastal stock is not expected to occur in the survey area, densities and takes were only analyzed for the offshore stock.

Pilot whale density models from Duke University (Roberts et al. 2016a, 2016b, 2017) represent pilot whales as a 'guild' rather than by species. However, since the survey area is only expected to contain long-finned pilot whales, it is assumed that pilot whale densities modeled by Roberts et al. (2016a, 2016b, 2017) in the survey area only reflect the presence of long-finned pilot whales.

Recently, the Duke University density data have been updated with new modeling results, including updated NARW density data and density estimates for pinnipeds (Roberts *et al.,* 2016b, 2017, 2018, 2020). Updated density estimates for the NARW are due to the inclusion of three new datasets: 2011–2015 Northeast Large Pelagic Survey Cooperative, 2017–2018 Marine Mammal Surveys of the Wind Energy Areas conducted by the New England Aquarium, and 2017–2018 New York Bight Whale Monitoring Program surveys conducted by the New York State Department of Environmental conservation (NYSDEC). This new density data shows distribution changes that are likely influenced by oceanographic and prey covariates in the whale density model (Roberts *et al.,* 2021).

Pinniped density data (as presented in Roberts *et al.,* 2016b, 2017, 2018) were used to estimate pinniped densities within the identified survey area. Since pinniped density models (Roberts *et al.,* 2016b, 2017, 2018) represent seals as a ''guild'' rather than by species, seal densities were apportioned for gray and harbor seals as 50% for each stock. These estimates were then applied to the average seasonal density values which were analyzed using the Roberts *et al.* (2018) data.

Seasonal marine mammal densities across survey areas are shown in Table 8. Maximum densities used in exposure analysis are shown in Table 9.

TABLE 8—MARINE MAMMAL SEASONAL DENSITIES ACROSS SURVEY SITES

| Species | Averaged seasonal densities (number of animals per 100 km$^2$) | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Spring | | Summer | | Fall | | Winter | |
| | Lease area | ECR | Lease area | ECR | Lease area | ECR | Lease area | ECR |
| North Atlantic right whale | 0.386 | 0.475 | 0.003 | 0.003 | 0.011 | 0.012 | 0.273 | 0.373 |
| Humpback whale | 0.068 | 0.045 | 0.021 | 0.023 | 0.055 | 0.058 | 0.021 | 0.040 |
| Fin whale | 0.230 | 0.193 | 0.295 | 0.216 | 0.237 | 0.170 | 0.167 | 0.120 |
| Sei whale | 0.012 | 0.013 | 0.002 | 0.001 | 0.002 | 0.002 | 0.002 | 0.001 |
| Minke whale | 0.168 | 0.112 | 0.062 | 0.037 | 0.045 | 0.027 | 0.057 | 0.039 |
| Sperm whale | 0.003 | 0.003 | 0.030 | 0.042 | 0.021 | 0.023 | 0.002 | 0.001 |
| Long-finned pilot whale | 0.354 | 0.256 | 0.354 | 0.256 | 0.354 | 0.256 | 0.354 | 0.256 |
| Bottlenose dolphin (offshore stock) | 1.622 | 0.776 | 2.309 | 3.028 | 5.011 | 3.231 | 2.786 | 1.347 |
| Common dolphin | 7.017 | 3.326 | 6.138 | 3.753 | 7.235 | 6.611 | 19.246 | 13.251 |
| Atlantic white-sided dolphin | 2.213 | 1.611 | 0.972 | 0.802 | 0.855 | 0.726 | 1.461 | 0.890 |
| Atlantic spotted dolphin | 0.062 | 0.036 | 0.513 | 0.327 | 0.409 | 0.267 | 0.026 | 0.015 |
| Risso's dolphin | 0.012 | 0.005 | 0.089 | 0.038 | 0.024 | 0.012 | 0.032 | 0.015 |
| Harbor porpoise | 6.657 | 6.059 | 0.034 | 0.049 | 0.215 | 0.556 | 3.927 | 5.635 |
| Harbor seal | 3.544 | 5.799 | 0.052 | 0.077 | 0.055 | 0.109 | 3.262 | 5.479 |
| Gray seal | 3.544 | 5.799 | 0.052 | 0.077 | 0.055 | 0.109 | 3.262 | 5.479 |

TABLE 9—MAXIMUM SEASONAL DENSITIES OF MARINE MAMMALS USED IN EXPOSURE ANALYSIS

| Species | Maximum seasonal density used (number of animals per 100 km$^2$) | |
|---|---|---|
| | Lease area | ECR survey area |
| North Atlantic right whale | 0.386 | 0.475 |
| Humpback whale | 0.068 | 0.058 |
| Fin whale | 0.295 | 0.216 |

TABLE 9—MAXIMUM SEASONAL DENSITIES OF MARINE MAMMALS USED IN EXPOSURE ANALYSIS—Continued

| Species | Maximum seasonal density used (number of animals per 100 km²) | |
|---|---|---|
| | Lease area | ECR survey area |
| Sei whale | 0.012 | 0.013 |
| Minke whale | 0.168 | 0.112 |
| Sperm whale | 0.030 | 0.042 |
| Long-finned pilot whale | 0.354 | 0.256 |
| Bottlenose dolphin | 5.011 | 3.231 |
| Common dolphin | 19.246 | 13.251 |
| Atlantic white-sided dolphin | 2.213 | 1.611 |
| Atlantic spotted dolphin | 0.062 | 0.036 |
| Risso's dolphin | 0.089 | 0.038 |
| Harbor porpoise | 6.657 | 6.059 |
| Harbor seal | 3.544 | 5.799 |
| Gray seal | 3.544 | 5.799 |

*Take Estimation*

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

The number of marine mammals expected to be incidentally taken per day is 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 (*i.e.,* 360). 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 with the resulting proposed take of marine mammals is shown below in Table 10:

Estimated Take = D × ZOI × # of days

Where:

*D = average species density (per km²);* and
*ZOI = maximum daily ensonified area to relevant thresholds.*

TABLE 10—TOTAL ESTIMATED AND REQUESTED TAKE NUMBERS

[By Level B harassment only]

| Species | Calculated take estimate | | Combined take estimate | Total adjusted proposed take estimate * | Proposed percent of population to be taken |
|---|---|---|---|---|---|
| | Lease area | ECR survey area | | | |
| North Atlantic right whale | 11 | 13 | 24 | 24 | 6.5 |
| Humpback whale * | 2 | 2 | 4 | 8 | 0.6 |
| Fin whale | 9 | 7 | 16 | 16 | 0.2 |
| Sei whale ^ | 0.3 | 0.4 | 0.7 | 2 | 0.03 |
| Minke whale | 5 | 3 | 8 | 8 | 0.04 |
| Sperm whale | 0.9 | 2 | 2.9 | 3 | 0.07 |
| Long-finned pilot whale * | 10 | 8 | 18 | 20 | 0.07 |
| Bottlenose dolphin (Offshore stock) | 141 | 91 | 232 | 232 | 0.4 |
| Common dolphin | 539 | 372 | 911 | 911 | 0.2 |
| Atlantic white-sided dolphin | 62 | 46 | 108 | 108 | 0.5 |
| Atlantic spotted dolphin * | 2 | 1 | 3 | 100 | 0.3 |
| Risso's dolphin * | 3 | 2 | 5 | 30 | 0.1 |
| Harbor porpoise | 187 | 170 | 357 | 357 | 0.4 |
| Harbor seal | 100 | 163 | 263 | 263 | 0.4 |
| Gray seal | 100 | 163 | 263 | 263 | 1.0 |

* Requested take adjusted for group size.
^ Based upon previous IHAs.

NMFS proposes to round decimal estimates to the nearest whole number in the event that a decimal was calculated for take. Therefore, take estimates for the sperm whale and sei whale were rounded up to three whales and two whales, respectively (Table 10). Requested take estimates were also adjusted to account for typical group sizes of humpback whale (King *et al.,* 2021), Risso's dolphin (NOAA 2022b), Atlantic spotted dolphin (Jefferson *et al.,* 2008), and long-finned pilot whale (NOAA 2022b). A total of 30 takes of Risso's dolphin, 100 takes of Atlantic spotted dolphin, and 20 takes of long-finned pilot whales are requested. Adding these additional takes ensures the number of takes authorized is at least equal to the average group size, and NMFS agrees with this approach.

Based on recent information from King *et al.* (2021) that demonstrated that the humpback whale is commonly sighted along the New York Bight area, NMFS determined that the humpback whale take request may be too low given the occurrence of animals near the survey area. Because of this, NMFS proposes to double the requested take to account for underestimates to the actual occurrence of this species within the density data.

Previously, 100 takes of Atlantic spotted dolphins, by Level B harassment, were authorized to Atlantic

Shores during their 2020 IHA surveys (85 FR 7926; February 12, 2020). Early into the 2021 field season, Atlantic Shores observed large numbers of Atlantic spotted dolphins. A take of 100 Atlantic spotted dolphins was authorized for the Atlantic Shores 2022 IHA (87 FR 4200, January 27, 2022) to account for these numerous sightings. Based upon takes authorized for prior IHAs, NMFS proposes to adjust the take estimate, by Level B harassment, from 3 to 100 Atlantic spotted dolphins.

One sei whale take was calculated (Table 10), however, Atlantic Shores Bight has requested to increase sei whale takes to two whales. This increase is based on the average group size of sei whales (NOAA 2022b). Therefore, NMFS proposes to adjust the take estimate, by Level B harassment, from 1 sei whale to 2 sei whales.

**Proposed Mitigation**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

NMFS proposes the following mitigation measures be implemented during Atlantic Shores Bight's planned marine site characterization surveys. Pursuant to section 7 of the ESA, Atlantic Shores Bight is also required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

*Marine Mammal Shutdown Zones*

Marine mammal shutdown zones would be established around specified HRG survey equipment and monitored by protected species observers (PSOs). These PSOs will be NMFS-approved visual PSOs. Based upon the acoustic source in use (impulsive: Sparkers; non-impulsive: Non-parametric sub-bottom profilers), a minimum of one PSO must be on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours. These PSO will monitor shutdown zones based upon the radial distance from the acoustic source rather than being based around the vessel itself. The shutdown zone distances are as follows:

- A 500-m shutdown zone for North Atlantic right whales during use of specified acoustic sources (impulsive: Sparkers; non-impulsive: Non-parametric sub-bottom profilers).
- A 100-m shutdown zone for all other marine mammals (excluding NARWs and delphinids from the genera *Delphinus, Lagenorhynchus, Stenella,* or *Tursiops* that are visually detected as voluntarily approaching the vessel or towed equipment) during use of specified acoustic sources (as specified below). All visual monitoring must begin no less than 30 minutes prior to the initiation of the specified acoustic source and must continue until 30 minutes after use of specified acoustic sources ceases.

If a marine mammal is detected approaching or entering the shutdown zones during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. If a shutdown is required, a PSO will notify the survey crew immediately. Vessel operators and crews will comply immediately with any call for shutdown. Shutdown will remain in effect until the minimum separation distances (detailed above) between the animal and noise source are re-established. These stated requirements will be included in the site-specific training to be provided to the survey team.

*Ramp Up of Survey Equipment and Pre-Clearance of the Shutdown Zones*

When technically feasible, a ramp-up procedure would be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The ramp-up procedure would be used in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. When technically feasible, the power would then be gradually turned up and other acoustic sources would be added. All ramp-ups shall be scheduled so as to minimize the time spent with the source being activated.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective shutdown zone. Ramp-up will continue if the animal has been observed exiting its respective shutdown zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species).

Atlantic Shores Bight would implement a 30 minute pre-clearance period of the shutdown zones prior to the initiation of ramp-up of HRG equipment. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up. This would allow the PSOs to monitor the shutdown zones for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Atlantic Shores Bight must receive confirmation from the PSO that the shutdown zone is clear prior to proceeding. During this 30 minute pre-start clearance period, the entire applicable shutdown zones must be visible. The exception to this would be in situations where ramp-up may occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine

mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

During this period, the shutdown zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective shutdown zone. If a marine mammal is observed within a shutdown zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective shutdown zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species). If a marine mammal enters the shutdown zone during ramp-up, ramp-up activities must cease and the source must be shut down. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

The pre-clearance zones would be:

- 500-m for all ESA-listed species (North Atlantic right, sei, fin, sperm whales); and
- 100-m for all other marine mammals.

If any marine mammal species that are listed under the ESA are observed within the clearance zones, the presence of the animal will be recorded and the 30 minute clock must be paused. If the PSO confirms the animal has exited the zone and headed away from the survey vessel, the 30 minute clock that was paused may resume. The pre-clearance clock will reset to 30 minutes if the animal dives or visual contact is otherwise lost.

If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), the acoustic source may be reactivated without ramp-up if PSOs have maintained constant visual observation and no detection of marine mammals occurs within the applicable shutdown zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Activation of survey equipment through ramp-up procedures may not occur when visual detection of marine mammals within the pre-clearance zone is not expected to be effective (*e.g.,* during inclement conditions such as heavy rain or fog).

The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

*Shutdown Procedures*

An immediate shutdown of the impulsive HRG survey equipment (Table 2) would be required if a marine mammal is sighted entering or within its respective shutdown zone(s). Any PSO on duty has the authority to call for a shutdown of the acoustic source if a marine mammal is detected within the applicable shutdown zones. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.

The shutdown requirement is waived for small delphinids (belonging to the genera of the Family *Delphinidae: Delphinus, Lagenorhynchus, Stenella,* or *Tursiops*) and pinnipeds if they are visually detected within the applicable shutdown zones. If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the applicable Level B harassment zone, shutdown would occur. In the event of uncertainty regarding the identification of a marine mammal species (*i.e.,* such as whether the observed marine mammal belongs to *Delphinus, Lagenorhynchus, Stenella,* or *Tursiops* for which shutdown is waived, PSOs must use their best professional judgment in making the decision to call for a shutdown.

Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required.

Upon implementation of a shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period of 15 minutes for harbor porpoises and 30 minutes for all other species where there are no further detections of the marine mammal.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* parametric sub-bottom profilers) other than non-parametric sub-bottom profilers (*e.g.,* CHIRPs). Pre-clearance and ramp-up, but not shutdown, are required when using non-impulsive, non-parametric sub-bottom profilers.

*Seasonal Operating Requirements*

A section of the proposed survey area overlaps with approximately 2% of a North Atlantic right whale SMA. This SMA is active from November 1 through April 30 of each year. All survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. Members of the monitoring team would also monitor the NMFS North Atlantic right whale reporting systems for the establishment of Dynamic Management Areas (DMA). NMFS may also establish voluntary right whale Slow Zones any time a right whale (or whales) is acoustically detected. Atlantic Shores Bight should be aware of this possibility and remain attentive in the event a Slow Zone is established nearby or overlapping the survey area (Table 11).

TABLE 11—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN SURVEY AREA

| Survey area | Species | DMA restrictions | Slow zones | SMA restrictions |
|---|---|---|---|---|
| Lease Area | North Atlantic Right Whale (*Eubalaena glacialis*). | If established by NMFS, all of Atlantic Shores Bight's vessels will abide by the described restrictions. | | N/A. |
| ECR Survey Area | | | | November 1–April 30 (ports of New York/New Jersey). |

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The proposed survey activities would occur in an area that has been identified as a biologically important area (BIA) for migration for North Atlantic right whales. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area and the relatively low amount of noise generated by the survey, the survey is not expected to appreciably reduce the quality of migratory habitat nor to negatively impact the migration of North Atlantic right whales.

*Vessel Strike Avoidance Procedures*

Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

- A Vessel Strike Avoidance Zone(s) will be maintained, as defined as 1,640 ft (500 m) or greater from any sighted ESA-listed whale species or other unidentified large marine mammal;
  - If a large whale is identified within 1,640 ft (500 m) of the forward path of any vessel, the vessel operator must steer a course away from the whale at 10 knots (18.5 km/hr) or less until the 1,640 ft (500 m) minimum separation distance has been established. Vessels may also shift to idle if feasible.
  - If a large whale is sighted within 656 ft (200 m) of the forward path of a vessel, the 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 1,640 ft (500 m). If stationary, the vessel must not engage engines until the large whale has moved beyond 1,640 ft (500 m).
- All vessel operators and crew will maintain vigilant watch for all marine mammals, and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammals. Unless a required PSO is aboard and on duty, then a designated and trained vessel crew member on all vessels associated with survey activities (transiting [*i.e.,* traveling between a port and survey site] or actively surveying) will be assigned as a lookout for marine mammals;
- Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, daily and as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA. All survey vessels, regardless of size, will observe a 10 knot (less than 18.5 km per hour [km/h]) speed restriction in the specific areas designated by NOAA Fisheries for the protection of NARWs from vessel strikes including seasonal management areas (SMAs), Right Whale Slow Zones, and dynamic management areas (DMAs), when in effect. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- All vessels greater than or equal to 65 ft (19.8 m) in overall length operating from November 1 through April 30 will operate at speeds of 10 knots or less while transiting to and from the survey area.
- All vessels, regardless of size, will reduce vessel speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near (within 330 ft [100 m]) of an underway vessel.
- All vessels will, to the maximum extent practicable, attempt to maintain a minimum separation distance of 164 ft (50 m) from all other marine mammals than ESA-listed and large whales, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel will take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). Engines will not be engaged until the animals are clear of the area. This will not apply to any vessel towing gear or any vessel that is navigationally constrained.

**Training**

All PSOs must have completed a PSO training program and received NMFS approval to act as a PSO for geophysical surveys. Documentation of NMFS approval and most recent training certificates of individual PSOs' successful completion of a commercial PSO training course must be provided upon request. Further information can be found at *www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-observers*. In the event where third-party PSOs are not required, crew members serving as lookouts must receive training on protected species identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements.

Atlantic Shores Bight shall instruct relevant vessel personnel with regard to the authority of the marine mammal monitoring team, and shall ensure that relevant vessel personnel and the marine mammal monitoring team participate in a joint onboard briefing (hereafter PSO briefing), led by the vessel operator and lead PSO, prior to beginning survey activities to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, safety and operational procedures, and IHA requirements are clearly understood. This PSO briefing must be repeated when relevant new personnel (*e.g.,* PSOs, acoustic source operator) join the survey operations before their responsibilities and work commences.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. All vessel crew members must be briefed in the identification of protected species that may occur in the survey area and in regulations and best practices for avoiding vessel collisions. Reference materials must be available aboard all project vessels for identification of listed species. The expectation and process for reporting of protected species sighted during surveys must be clearly communicated and posted in highly visible locations aboard all project vessels, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

*Proposed Monitoring Measures*

Atlantic Shores Bight must use independent, dedicated, trained PSOs, meaning that the PSOs 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 vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, would coordinate duty schedules and roles for the PSO team, and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars or night-vision equipment and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Any observations of marine mammal by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Atlantic Shores Bight must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* $7 \times 50$) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);

• Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
• Equipment necessary for accurate measurement of distances to marine mammal;
• Compasses (at least one plus backups);
• Means of communication among vessel crew and PSOs; and
• Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-part PSO provider, or the operator, but Atlantic Shores Bight is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

During good conditions (*e.g.,* daylight hours; Beaufort sea state 3 or less), PSOs shall conduct observations when the specified acoustic sources are not operating for comparison of sighting rates and behavior with and without use of the specified acoustic sources and between acquisition periods, to the maximum extent practicable.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including shutdown zones, during all HRG survey operations. PSOs will visually monitor and identify shutdown zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

In cases when pre-clearance has begun in conditions with good visibility, including via the use of night-vision equipment, and the lead PSO has determined that the pre-start clearance zones are clear of marine mammals, survey operations may commence (*i.e.,* no delay is required) despite brief periods of inclement weather and/or loss of daylight.

Atlantic Shores Bight plans to utilize six PSOs across each vessel to account for shift changes, with a total of 18 during this project (six PSOs per vessel x three vessels). At a minimum, during all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Exclusion Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Proposed Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

*Proposed Reporting Measures*

Atlantic Shores Bight shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information submitted in interim monthly reports (if required) as well as additional data collected. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, ITP.Taylor@noaa.gov,* and *nmfs.gar.incidental-take@noaa.gov*.

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances.

At a minimum, the following information must be recorded:

1. Vessel names (source vessel and other vessels associated with survey), vessel size and type, maximum speed capability of vessel;

2. Dates of departures and returns to port with port name;

3. The lease number;

4. PSO names and affiliations;

5. Date and participants of PSO briefings;

6. Visual monitoring equipment used;

7. PSO location on vessel and height of observation location above water surface;
8. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
9. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
10. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval
11. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
12. Water depth (if obtainable from data collection software);
13. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
14. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
15. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

Upon visual observation of any marine mammal, the following information must be recorded:
1. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
2. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
3. PSO who sighted the animal;
4. Time of sighting;
5. Initial detection method;
6. Sightings cue;
7. Vessel location at time of sighting (decimal degrees);
8. Direction of vessel's travel (compass direction);
9. Speed of the vessel(s) from which the observation was made;
10. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;
11. Species reliability (an indicator of confidence in identification);
12. Estimated distance to the animal and method of estimating distance;
13. Estimated number of animals (high/low/best);
14. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
15. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
16. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);
17. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, etc.) and time and location of the action;
18. Equipment operating during sighting;
19. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and
20. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Atlantic Shores Bight must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866–755–6622) within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that Atlantic Shores Bight personnel discover an injured or dead marine mammal, regardless of the cause of injury or death, Atlantic Shores Bight must report the incident to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report must include the following information:
1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Atlantic Shores Bight must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:
1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;
3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);
5. Status of all sound sources in use;
6. 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;
7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
8. Estimated size and length of animal that was struck;
9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;
10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
11. 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
12. To the extent practicable, photographs or video footage of the animal(s).

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact

determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations, the estimated size of the Level A harassment zones, and the required shutdown zones for certain activities.

In addition to HRG activities being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activity in estimating take numbers proposed for authorization and evaluated here, in reality, the Applied Acoustics Dura-Spark 240 would likely not be used across the entire 24-hour period and across all 360 days. As noted in Table 6, the other acoustic sources Atlantic Shores Bight has included in their application produce Level B harassment zones below 60-m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their habitat.

Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Due to the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no known mating or calving grounds nor feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any ESA-listed marine mammals in the proposed survey area.

*North Atlantic Right Whales*

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the proposed survey area overlaps a migratory corridor BIA for North Atlantic right whales. Due to the fact that the proposed survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the proposed survey activities. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Atlantic Shores Bight's proposed activities. The 500-m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141-m, and thereby minimizes the potential for behavioral harassment of this species.

As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use. The proposed authorizations for Level B harassment takes of North Atlantic right whale are not expected to exacerbate or compound upon the ongoing UME. The limited North Atlantic right whale Level B harassment takes proposed for authorization are expected to be of a short duration, and given the number of estimated takes, repeated exposures of the same individual are not expected. Further, given the relatively small size of the ensonified area during Atlantic Shores Bight's proposed activities, it is unlikely that North Atlantic right whale prey availability would be adversely affected. Accordingly, NMFS does not anticipate that any North Atlantic right whales takes resulting from Atlantic Shores Bight's proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

*Other Marine Mammal Species With Active UMEs*

As noted previously, there are several active UMEs occurring in the vicinity of Atlantic Shores Bight's proposed survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The required mitigation measures are expected to reduce the number and/or

severity of proposed takes for all species listed in Table 3, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. As discussed previously, take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use, and is not proposed for authorization. Implementation of required mitigation would further reduce this potential. Therefore, NMFS is not proposing any Level A harassment for authorization.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions, temporarily vacating the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

*Biologically Important Areas for Other Species*

As previously discussed, impacts from the proposed project are expected to be localized to the specific area of activity and only during periods of time where Atlantic Shores Bight's acoustic sources are active. While BIAs for feeding for fin and humpback whales as well as haul out sites for harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect this proposed action to affect these areas. This is due to the combination of the mitigation and monitoring measures being required of Atlantic Shores Bight as well as the location of these biologically important areas. All of these important areas are found outside of the range of this survey area, as is the case with fin whales and humpback whales (BIAs found further north), and, therefore, not expected to be impacted by Atlantic Shores Bight's proposed survey activities.

Three major haul-out sites exist for harbor seals, inshore of the ECR Survey Area along New Jersey, at Great Bay, Sand Hook, and Barnegat Inlet (CWFNJ, 2015). As hauled outs are inshore and seals would be out of the water, no in-water effects are expected.

*Preliminary Determinations*

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed for authorization;
- Foraging success is not likely to be impacted as effects on prey species for marine mammals from the proposed activities are expected to be minimal;
- Alternate areas of similar habitat value are available for marine mammals to temporarily vacate the survey area during the planned activities to avoid exposure to sounds generated by surveys;
- Take is anticipated to be by Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within a noted migratory BIA for North Atlantic right whales, the activities would occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration; and
- The proposed mitigation measures, including effective visual monitoring, and shutdowns are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activities on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take (by Level B harassment only) of 15 marine mammal species (with 15 managed stocks). The total amount of takes proposed for authorization relative to the best available population abundance is less than 7 percent for all stocks (Table 11). Therefore, NMFS preliminarily finds that small numbers of marine mammals may be taken relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act**

Section 7(a)(2) of the ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Greater Atlantic Regional Fisheries Office.

NMFS OPR is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within

the scope of activities analyzed in NMFS GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Atlantic Shores Bight for conducting site characterization surveys off New Jersey and New York from August 1, 2022 through July 31, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities.-*

**Request for Public Comments**

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed site characterization surveys. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 22, 2022.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC024]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off the Coast of New Jersey and New York in the New York Bight

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from Attentive Energy LLC (Attentive Energy) for authorization to take marine mammals incidental to marine site characterization surveys off the coast of New Jersey and New York in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area OCS–A 0538. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than July 27, 2022.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.harlacher@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

**Background**

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to

harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

**Summary of Request**

On April 11, 2022 NMFS received a request from Attentive Energy for an IHA to take marine mammals incidental to conducting marine site characterization surveys off the coast of New Jersey and New York in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area (OCS)–A 0538. The application was deemed adequate and complete on May 23, 2022. Attentive Energy's request is for take of 15 species of marine mammals, by Level B harassment only. Neither Attentive Energy nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

**Description of Proposed Activity**

*Overview*

Attentive Energy proposes to conduct marine site characterization surveys using high-resolution geophysical (HRG) acoustic sources in the Lease Area OCS–A 0538.

The purpose of the proposed surveys is to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area. One survey vessel will operate as part of the proposed surveys. Underwater sound resulting from Attentive Energy's proposed site characterization survey activities, specifically HRG survey effort, has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

*Dates and Duration*

The estimated duration of the surveys is expected to be up to 42 to 56 total survey days (6 to 8 weeks) within a single year in the Lease Area. A survey day is defined as a 24-hour survey period where 200 kilometer of track line is surveyed. This schedule is based on 24-hours of operations for up to 8-weeks. In total there are 3,028 km of track line that would be surveyed within the Lease Area. The schedule presented here for this proposed project has accounted for potential down time due to inclement weather or other project-related delays, therefor actual survey time will be less than 8 weeks. Proposed activities would occur between August 1, 2022 and July 31, 2023.

*Specific Geographic Region*

Attentive Energy's proposed activities would occur in the Northwest Atlantic Ocean within Federal and state waters (Figure 1). Surveys would occur in the Lease Area off the coast of New York and New Jersey in the New York bight. Proposed activities would occur within the Commercial Lease of Submerged Lands for Renewable Energy Development in OCS–A 0538. The OCS Lease area is approximately 577.6 $km^2$ and is located between 30 and 60 meters water depth.

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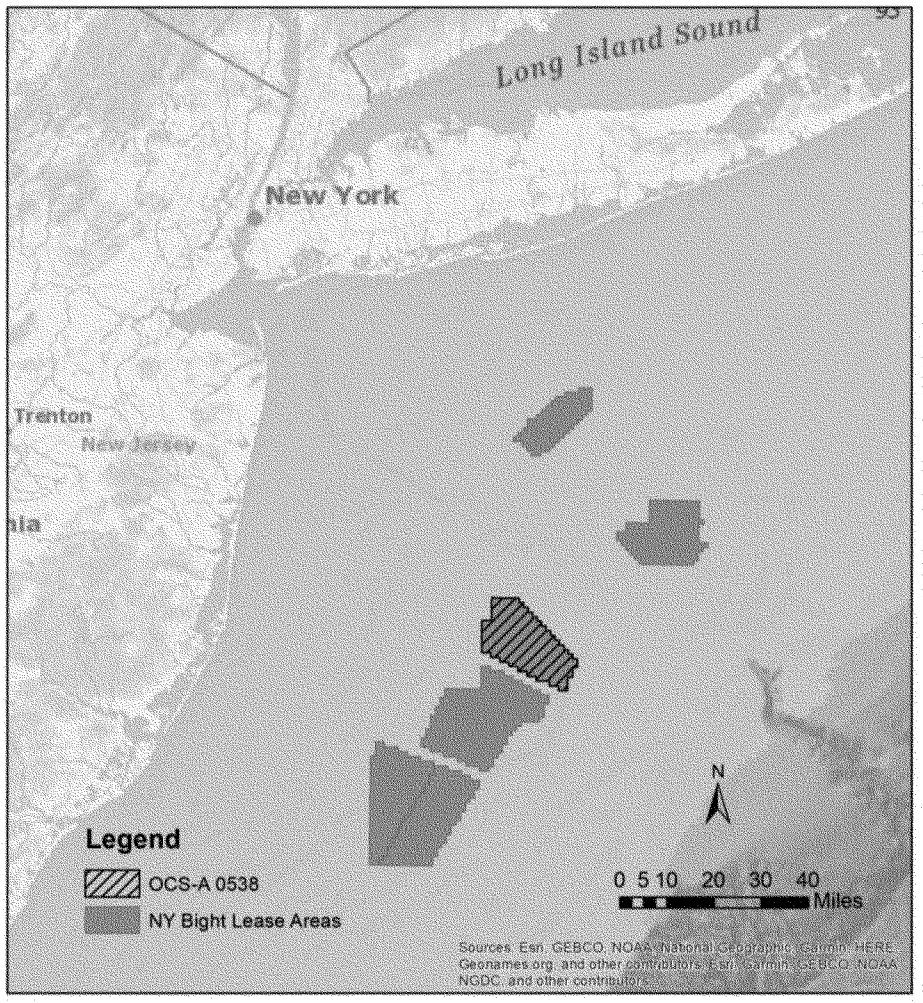


Figure 1. New York Bight Offshore Wind Lease Areas. Proposed Attentive Energy survey area is highlights with black hatching.

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*Detailed Description of Specific Activity*

Attentive Energy's proposed marine site characterization surveys include HRG and geotechnical survey activities. These survey activities would occur within the Lease Area off the coasts of New York and New Jersey in the New York Bight. The proposed HRG and geotechnical survey activities are described below.

Proposed Geotechnical Survey Activities

Attentive Energy proposed geotechnical survey activities would include the drilling of sample boreholes, deep cone penetration tests, and shallow cone penetration tests. The geotechnical survey activity is not expected to result in take of marine mammals. Similar activities were performed before in a nearby lease area by Atlantic Shores, and considerations of the impacts produced from geotechnical activities have been previously analyzed and included in the proposed 2020 **Federal Register** notice for Atlantic Shores' HRG activities (85 FR 7926; February 12, 2020). In that notification, NMFS determined that the likelihood of the proposed geotechnical surveys resulting in harassment of marine mammals was to be so low as to be discountable. As this information remains applicable and NMFS' determination has not changed, these activities will not be discussed further in this proposed notification.

Proposed Geophysical Survey Activities

Attentive Energy has proposed that HRG survey operations would be conducted continuously 24 hours a day. Based on 24-hour operations, the estimated total duration of the proposed activities would be approximately 8 weeks. As previously discussed above, this schedule does include potential down time due to inclement weather or other project-related delays. The HRG survey will be conducted with primary track lines spaced at 150-meter (m) intervals and tie-lines spaced at 500-m intervals.

The HRG survey activities will be supported by the use of a purpose-built survey vessel. These are designed with built-in A-frames and davits, permanently mounted winches, and other items on the deck specifically for survey operations. The geophysical survey activities proposed by Attentive Energy would include the following:

- Depth sounding to determine water depth, site bathymetry, and general bottom topography (multibeam echosounder);
- Magnetic intensity measurements (gradiometer) for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom;

• Seafloor imaging (sidescan sonar survey) for seabed sediment classification purposes, to identify natural and human-made acoustic targets resting on the bottom as well as any anomalous features;

• Shallow-bottom penetration sub-bottom profiler (SBP) to map the near surface stratigraphy (top 0 to 10 m [33 feet] below seabed in sand and 0 to 15 m [49 feet] in mixed sediments); and

• Medium penetration SBP (sparker) to map deeper subsurface stratigraphy as needed (soils down to at least 100 m [328 ft] below seabed in sand and at least 125 m [410 feet] below seabed in mixed sediments).

The representative survey equipment that may be used in support of planned geophysical survey activities can be found in Table 0–3 of Attentive Energy's Application. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Geophysical surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives. All proposed HRG survey equipment is listed in the application, including equipment that NMFS doesn't expect to result in take due to their higher frequencies and extremely narrow beam widths. Because of this, these sources were not considered when calculating the Level B harassment isopleths and are not discussed further in this notice. Acoustic parameters on this equipment can be found in Attentive Energy's IHA application on NMFS' website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*). We will only be discussing further the equipment listed below in Table 1. For equipment source level specifications noted in Table 1, a proxy representing the closest match in composition and operation of the Dual Geo-Spark was used from Crocker and Fratantonio (2016).

TABLE 1—PROPOSED ACOUSTIC EQUIPMENT FOR HRG SURVEYS

| HRG equipment type | Equipment make/model | Operating frequency (kHz) | Source level (RMS dB re 1 uPa @1m) | Reference for source level | Pulse duration (milliseconds) | Repetition rate (Hz) | Beam width (degrees) |
|---|---|---|---|---|---|---|---|
| **Mobile, Impulsive** | | | | | | | |
| Deep SBP ..... | Dual Geo-Spark 2000X (400 tip/500J). | 0.3 | 203 | Crocker and Fratantonio 2016*. | 1.1 | 4 | 180 |

*Applied Acoustics Dura-spark 500J to 2,000J as Proxy.
Key: RMS—Root mean square; dB—Decibel; re—referenced at; m—meters; SBP—Sub-bottom profiler; Hz—hertz; kHz—kilohertz; uPa—microPascal.

The deployment of HRG survey equipment, including the equipment planned for use during Attentive Energy proposed activities, produces sound in the marine environment that has the potential to result in harassment of marine mammals. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

## Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species and stocks for which take is expected and proposed to be authorized for this action and summarizes information related to the species and stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or 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 species managed under the MMPA in this region are assessed in NMFS' 2021 draft U.S. Atlantic and Gulf of Mexico Stock Assessment Report SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMAL SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

| Common name | Scientific name | Stock | ESA/ MMPA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| North Atlantic right whale | *Eubalaena glacialis* | Western Atlantic Stock | E/D, Y | 368 [4] (0; 364; 2019) | 0.7 | 7.7 |
| Humpback whale | *Megaptera novaeangliae* | Gulf of Maine | -/-; Y | 1,396 (0; 1,380; 2016) | 22 | 12.15 |
| Fin whale | *Balaenoptera physalus* | Western North Atlantic Stock | E/D, Y | 6,802 (0.24; 5,573; 2016) | 11 | 1.8 |
| Sei whale | *Balaenoptera borealis* | Nova Scotia Stock | E/D, Y | 6,292 (1.02; 3,098; 2016) | 6.2 | 0.8 |
| Minke whale | *Balaenoptera acutorostrata* | Canadian East Coastal Stock | -/-, N | 21,968 (0.31; 17,002; 2016) | 170 | 10.6 |
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| Sperm whale | *Physeter macrocephalus* | North Atlantic Stock | E/D, Y | 4,349 (0.28; 3,451; 2016) | 3.9 | 0 |
| Long-finned pilot whale | *Globicephala melas* | Western North Atlantic Stock | -/-, N | 39,215 (0.3; 30,627; 2016) | 306 | 29 |
| Atlantic white-sided dolphin. | *Lagenorhynchus acutus* | Western North Atlantic Stock | -/-, N | 93,233 (0.71; 54,443; 2016) | 544 | 227 |
| Bottlenose dolphin | *Tursiops truncatus* | Western North Atlantic Offshore Stock. | -/-, N | 62,851 (0.23; 51,914; 2016) | 519 | 28 |
| Common dolphin | *Delphinus delphis* | Western North Atlantic Stock | -/-, N | 172,974 (0.21, 145,216, 2016) | 1,452 | 390 |
| Atlantic spotted dolphin | *Stenella frontalis* | Western North Atlantic Stock | -/-, N | 39,921 (0.27; 32,032; 2016) | 320 | 0 |
| Risso's dolphin | *Grampus griseus* | Western North Atlantic Stock | -/-, N | 35,215 (0.19; 30,051; 2016) | 301 | 34 |
| Harbor porpoise | *Phocoena phocoena* | Gulf of Maine/Bay of Fundy Stock. | -/-, N | 95,543 (0.31; 74,034; 2016) | 851 | 164 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Harbor seal | *Phoca vitulina* | Western North Atlantic Stock | -/-, N | 61,336 (0.08; 57,637; 2018) | 1,729 | 339 |
| Gray seal [5] | *Halichoerus grypus* | Western North Atlantic Stock | -/-, N | 27,300 (0.22; 22,785; 2016) | 1,389 | 4,453 |

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/*marine-mammal-stock-assessments. CV is the coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

[5] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual mortality and serious injury (M/SI) value given is for the total stock.

As indicated above, all 15 species listed in Table 2 temporally and spatially co-occur with the proposed activity to the degree that take is reasonably likely to occur.

The temporal and/or spatial occurrence of several cetacean and pinniped species is such that take of these species is not expected to occur either because they have very low densities in the survey area or are known to occur further inshore or offshore than the survey area. These include: blue whale (*Balaenoptera musculus*), Dwarf and pygmy sperm whale (*Kogia sima* and *Kogia breviceps*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), Cuvier's beaked whale (*Ziphius cavirostris*), Mesoplodont beaked whales (*Mesoplodon* spp.), short finned pilot whale (*Globicephala macrorhynchus*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), harp seal (*Pagophilus groenlandicus*), and hooded seal (*Cystophora cristata*). As harassment and subsequent take of these species is not anticipated as a result of the proposed activities, these species are not analyzed or discussed further.

Below is a description of the species that have the highest likelihood of occurring in the survey area and are thus expected to potentially be taken by the proposed activities as well as further detail informing the status for select species (*i.e.,* information regarding current Unusual Mortality Events (UMEs) and important habitat areas).

*North Atlantic Right Whale*

The North Atlantic right whales range from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). They are observed year round in the Mid-Atlantic Bight, and surveys have demonstrated the existence of seven areas where North Atlantic right whales congregate seasonally, including north and east of the proposed survey area in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.,* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Given that Attentive Energy's surveys would be concentrated offshore in the New York Bight, some right whales may be present year round however, the majority in the vicinity of the survey areas are likely to be transient, migrating through the area. Some may be present year round however, the majority migrating through

The western North Atlantic population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.,* 2017). However, since 2010 the

population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.,* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.,* 2017). On average, North Atlantic right whale calving rates are estimated to be roughly half that of southern right whales (*Eubalaena australis*) (Pace *et al.,* 2017), which are increasing in abundance (NMFS, 2015). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Eighteen right whale calves were documented in 2021. As of the end of 2021 two North Atlantic right whale calves have documented to have been born during this calving season.

The proposed survey area is part of a migratory corridor Biologically Important Area (BIA) for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break. This important migratory area is approximately 269,488 km² in size (compared with the approximately 854 km² of total estimated Level B harassment ensonified area associated with the 8-week planned survey) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts. NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. A portion of one SMA, which occurs off the mouth of the New York Bight, is close to the proposed survey area. The SMA, which occurs off the mouth of the New York Bight, is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 kn) for all vessels greater than 65 ft. Attentive Energy survey vessel, regardless of length, would be required to adhere to a 10 knot vessel speed restriction when operating within this SMA. In addition, Attentive Energy survey vessel, regardless of length, would be required to adhere to a 10 knot vessel speed restriction when operating in any Dynamic Management Area (DMA) declared by NMFS.

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 15 of the mortalities thus far. As of June 2, 2022, a total of 34 confirmed dead stranded whales (21 in Canada; 13 in the United States) have been documented. The cumulative total number of animals that have stranded during the North Atlantic right whale UME has been updated to 50 individuals to include both the confirmed mortalities (dead stranded or floaters) (n=34) and seriously injured free-swimming whales (n=16) to better reflect the confirmed number of whales likely removed from the population during the UME and more accurately reflect the population impacts. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event.*

Recent aerial surveys in the New York Bight showed NARW in the proposed survey area in the winter and spring, preferring deeper waters near the shelf break (NARW observed in depths ranging from 33–1041m), but were observed throughout the survey area (Normandeau Associates and APEM, 2020; Zoidis et al., 2021). Similarly, passive acoustic data collected from 2018 to 2020 in the New York Bight showed detections of NARW throughout the year (Estabrook et al., 2021). Seasonally, NARW acoustic presence was highest in the fall. NARW can be anticipated to occur in the proposed survey area year-round but with lower levels in the summer from July–September.

*Humpback Whale*

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. On September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area. Gulf of Maine humpback whales are designated as a stock under the MMPA and are also part of the West Indies DPS. However, humpback whales occurring in the survey area are not necessarily from the Gulf of Maine stock. Barco *et al.* (2002) estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.,* 2007a; Waring *et al.,* 2007b). A key question with regard to humpback whales off the Mid-Atlantic states is their stock identity. Furthermore, King *et al.* (2021) highlights important concerns for humpback whales found specifically in the nearshore environment (<10 km from shore) from various anthropogenic impacts.

Recent aerial surveys in the New York Bight observed humpback whales in the spring and winter, but sightings were reported year round in the area (Normandeau Associates and APEM, 2020). Humpback whales preferred deeper waters near the shelf break, but were observed throughout the area. Additionally, passive acoustic data recorded humpback whales in the New York Bight throughout the year, but the presence was highest in the fall and summer months (Estabrook et al., 2021).

Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 159 known cases (as of June 2, 2022). Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. 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: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

*Fin Whale*

Fin whales are common in waters of the U. S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.,* 2016). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2016).

The western north Atlantic stock of fin whales includes the area from Central Virginia to Newfoundland/Labrador Canada. This region is primarily a feeding ground for this migratory species that tends to calve and breed in lower latitudes or offshore. There is currently no critical habitat designated for this species.

Recent aerial surveys in the New York Bight observed fin whales year-round throughout the survey area, but they preferred deeper waters near the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic data from 2018 to 2020 also detected fin whales throughout the year (Estabrook *et al.,* 2021).

*Sei Whale*

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.,* 2015). Sei whales occur in shallower waters to feed. Currently there is no critical habitat for sei whales, though they can be observed along the shelf edge of the continental shelf. The main threats to this stock are interactions with fisheries and vessel collisions.

Recently conducted aerial surveys in the New York Bight observed sei whales in both winter and spring, though they preferred deeper waters near the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic data in the survey area detected sei whales throughout the year except January and July, with highest detections in March and April (Estabrook *et al.,* 2021).

*Minke Whale*

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters less than 100-m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Waring *et al.,* 2016). Recent aerial surveys in the New York Bight area found that minke whales were observed throughout the survey area, with highest numbers sighting in the spring months (Normandeau Associates and APEM, 2020).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 122 strandings (as of June 2, 2022). This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the stranded whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

*Sperm Whale*

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). They are rarely found in waters less than 300 meters deep. The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead, 2002). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras.

Recent aerial studies observed sperm whales in the highest number in the summer, with a preference for the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic recordings of sperm whale recorded them throughout the year, and again highest during spring and summer (Estabrook et al., 2021).

*Risso's Dolphin*

The status of the Western North Atlantic stock is not well understood. They are broadly distributed in tropical and temperate latitudes throughout the world's oceans, and the Western North Atlantic stock occurs from Florida to eastern Newfoundland. They are common on the northwest Atlantic continental shelf in summer and fall with lower abundances in winter and spring. Newer aerial surveys in the New York Bight area sighted Risso's dolphins throughout the year at the shelf break with highest abundances in spring and summer (Normandeau Associates and APEM, 2020).

*Long-Finned Pilot Whale*

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). Recently conducted aerial surveys in the New York Bight area noted a preference for deeper water at the shelf break throughout the year (Normandeau Associates and APEM, 2020).

*Atlantic White-Sided Dolphin*

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). The Gulf

of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann, 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. Recent aerial studies confirmed previous studies with observations in fall and winter in the New York Bight area with preference for deep water at the shelf break throughout the year (Normandeau Associates and APEM, 2020).

*Atlantic Spotted Dolphin*

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200-m isobaths (Waring *et al.,* 2014). They are relatively uncommon in the survey area.

*Common Dolphin*

The common dolphin is found worldwide in temperate to subtropical seas. In the North Atlantic, common dolphins are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). They have been observed in coastal and offshore waters, observed migrating to mid-Atlantic waters during winter months.

*Bottlenose Dolphin*

There are two distinct bottlenose dolphin morphotypes in the western North Atlantic: The coastal and offshore stocks (Waring *et al.,* 2016). The offshore stock is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys. The offshore stock is the only stock likely to occur in the survey area due to it being limited to the Lease area. The Western North Atlantic Offshore stock is generally observed along the outer continental shelf and slope in waters deeper than 34 m and over 34 km offshore (Torres et al., 2003).

*Harbor Porpoise*

In the Lease Area, only the Gulf of Maine/Bay of Fundy stock may be present in the fall and winter. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150-m deep (Waring *et al.,* 2016). They are seen from the coastline to deep waters (>1,800-m; Westgate *et al.,* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016).

*Pinnipeds (Harbor Seal and Gray Seal)*

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30° N (Burns, 2009). In the western North Atlantic, harbor seals are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Waring *et al.,* 2016). Haul-out and pupping sites are located off Manomet, MA and the Isles of Shoals, ME, but generally do not occur in areas in southern New England (Waring *et al.,* 2016). They seasonal migrate down to the mid-Atlantic from fall to spring months.

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals are regularly observed in the survey area in the survey area and these seals belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2016). Documented haul outs for gray seas in Long Island area, with a possible rookery on Little Gull Island.

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs (*e.g.,* symptoms of disease) as far south as Virginia, although not in elevated numbers, therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Ice seals (harp and hooded seals) have also started stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. A total of 3,152 reported strandings (of all species) had 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. Presently, this UME is non-active and is pending closure by NMFS. Information on this UME is available online at: *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. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups.

Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales). | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales). | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals). | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals). | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

This section includes a discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals may or may not impact marine mammal species.

*Background on Active Acoustic Sound Sources and Acoustic Terminology*

This subsection contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to the summary of the potential effects of the specified activity on marine mammals. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.,* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude. Therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1-m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu Pa^2$-s) represents the total energy in a stated frequency band over a stated time interval or event and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be directed either in a beam or in beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of

sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Sparkers produce pulsed signals with energy in the frequency ranges, 0.05–4.0 kHz. The amplitude of the acoustic wave emitted from sparker sources is equal in all directions (*i.e.,* omnidirectional), while other sources planned for use during the proposed surveys have some degree of directionality to the beam.

*Summary on Specific Potential Effects of Acoustic Sound Sources*

Underwater sound from active acoustic sources can cause one or more of the following: temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

Animals in the vicinity of Attentive Energy proposed HRG survey activity are unlikely to incur even TTS due to the characteristics of the sound sources, which include generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS, as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and that the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and also remain very close to the vessel operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of many of HRG survey devices planned for use makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel. No mortality, injury or Permanent Threshold Shift (PTS) are expected to occur.

Behavioral disturbance to marine mammals from sound may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in

vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals expected from Attentive Energy's surveys given the directionality of the signals for most HRG survey equipment types planned for use and the brief period when an individual mammal is likely to be exposed.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg 2000; Seyle 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses. In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare. An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg 1987; Rivier 1995), reduced immune competence (Blecha 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been long been equated with stress. The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. In general, there are few data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007). There is currently no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory HRG and geotechnical survey activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly.

*Vessel Strike*

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are generally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

*Marine Mammal Habitat*

The HRG survey equipment will not contact the seafloor and does not represent a source of pollution. We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey

activities on the part of marine mammal prey. Any avoidance of the area on the part of marine mammal prey would be expected to be short term and temporary.

Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Impacts on marine mammal habitat from the proposed activities will be temporary, insignificant, and discountable.

The potential effects of Attentive Energy's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. Take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use, and is not proposed for authorization. Implementation of required mitigation further reduces this potential. Furthermore and as described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels; and, (3) the density or occurrence of marine mammals within these ensonified areas. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

*Acoustic Thresholds*

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

*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). These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group | PTS onset acoustic thresholds * (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | *Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB | *Cell 2:* $L_{E,LF,24h}$: 199 dB. |
| Mid-Frequency (MF) Cetaceans | *Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB | *Cell 4:* $L_{E,MF,24h}$: 198 dB. |
| High-Frequency (HF) Cetaceans | *Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB | *Cell 6:* $L_{E,HF,24h}$: 173 dB. |
| Phocid Pinnipeds (PW) (Underwater) | *Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB | *Cell 8:* $L_{E,PW,24h}$: 201 dB. |

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

| Hearing group | PTS onset acoustic thresholds * (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Otariid Pinnipeds (OW) (Underwater) ..... | *Cell 9:* $L_{pk,flat}$*:* 232 dB; $L_{E,OW,24h}$*:* 203 dB ..... | *Cell 10:* $L_{E,OW,24h}$*:* 219 dB. |

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

**Note:** Peak sound pressure ($L_{pk}$) has a reference value of 1 µPa, and cumulative sound exposure level ($L_E$) has a reference value of 1µPa$^2$s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

*Ensonified Area*

Here, we describe operational and environmental parameters of the proposed survey activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. 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. Table 1 shows the HRG equipment types used during the proposed surveys and the source levels associated with those HRG equipment types.

The results of the Level B harassment ensonified area analysis using the methodology described indicated that, of the HRG survey equipment planned for use by Attentive Energy the only one that has the potential to result in Level B harassment of marine mammals, the Dual Geo-Spark, has a Level B harassment isopleth of 141-m.

*Marine Mammal Occurrence*

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–2021 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.,* 2016a; Curtice *et al.,* 2018), represent the best available information regarding marine mammal densities in the proposed survey area. More recently, these data have been updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.,* 2016b, 2017, 2018).

The density data presented by Roberts *et al.,* (2016b, 2017, 2018, 2021) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from eight physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016a). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.*

Marine mammal density estimates in the survey area (animals/km$^2$) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016b, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For the exposure analysis, density data from Roberts *et al.,* (2016b, 2017, 2018, 2021) were mapped using a geographic information system (GIS). For the survey area, the monthly densities of each species as reported by Roberts *et al.* (2016b, 2017, 2018, 2021) were averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species was then carried forward in the exposure analysis, with a few exceptions noted later. Estimated seasonal densities (animals/km$^2$) of marine mammal species that may be taken by the proposed survey are in Table 5 below. The maximum seasonal density values used to estimate take numbers are shown in Table 6 below. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2016b, 2017, 2018, 2021) models provide results at the genus or guild level.

For bottlenose dolphin densities, Roberts *et al.,* (2016b, 2017, 2018) do not differentiate by stock. The Western North Atlantic northern migratory coastal stock is generally expected to occur only in coastal waters from the shoreline to approximately the 20-m (65-ft) isobath (Hayes *et al.,* 2018). As the Lease Area is located within depths exceeding 20-m, where the offshore stock would generally be expected to occur, all calculated bottlenose dolphin

exposures within the survey area were assigned to the offshore stock. Bottlenose dolphins densities were also calculated using the single month with the highest density to account for recent observations from IHAs issued in the New York Bight area, which documented more dolphins than the output of the Roberts' model predicted (86 FR 26465, May 10, 2021 and 85 FR 21198, April 16, 2020).

For long-finned pilot whales, the Roberts *et al.* (2016, 2017) data only provide a single raster grid containing annual density estimate for *Globicephala* species *(i.e.,* short-finned and long-finned pilot whales combined). The annual density raster grid was used to estimate density in the survey area and assumed it applies only to long-finned pilot whales, as short-finned pilot whales are not anticipated to occur as far north as the survey area.

Furthermore, the Roberts *et al.* (2016b, 2017, 2018) density model does not differentiate between the different pinniped species. For seals, given their size and behavior when in the water, seasonality, and feeding preferences, there is limited information available on species-specific distribution. Density estimates of Roberts *et al.* (2016, 2018) include all seal species that may occur in the Western North Atlantic combined (*i.e.,* harbor, gray, hooded, and harp). For this IHA, only the harbor seals and gray seals are reasonably expected to occur in the survey area; densities of seals were split evenly between these two species.

TABLE 5—ESTIMATED MARINE MAMMAL DENSITIES (Animals per km²) FOR LEASE AREA

| Species | Spring | Summer | Fall | Winter | Monthly max | Annual mean |
|---|---|---|---|---|---|---|
| **Mysticetes** | | | | | | |
| North Atlantic Right Whale | 0.00352 | 0.00004 | 0.00011 | 0.00172 | 0.00515 | 0.00135 |
| Humpback Whale | 0.00062 | 0.00022 | 0.00036 | 0.00012 | 0.00076 | 0.00033 |
| Fin Whale | 0.00258 | 0.00314 | 0.00227 | 0.00162 | 0.00444 | 0.00240 |
| Sei Whale | 0.00016 | 0.00003 | 0.00003 | 0.00002 | 0.00025 | 0.00006 |
| Common Minke Whale | 0.00190 | 0.00075 | 0.00054 | 0.00066 | 0.00286 | 0.00096 |
| **Odontocetes** | | | | | | |
| Sperm Whale | 0.00004 | 0.00054 | 0.00037 | 0.00002 | 0.00104 | 0.00024 |
| Risso's Dolphin | 0.00018 | 0.00108 | 0.00034 | 0.00046 | 0.00179 | 0.00052 |
| Long-finned Pilot Whale | N/A | N/A | N/A | N/A | N/A | 0.00471 |
| Atlantic White-sided Dolphin | 0.03038 | 0.01714 | 0.01310 | 0.02069 | 0.05016 | 0.02033 |
| Short-beaked Common Dolphin | 0.05495 | 0.04535 | 0.05959 | 0.13725 | 0.18987 | 0.07428 |
| Atlantic Spotted Dolphin | 0.00054 | 0.00599 | 0.00516 | 0.00024 | 0.00843 | 0.00298 |
| Harbor Porpoise | 0.07644 | 0.00042 | 0.00175 | 0.03952 | 0.12475 | 0.02953 |
| Common Bottlenose Dolphin | 0.01265 | 0.01828 | 0.04450 | 0.02509 | 0.05284 | 0.02513 |
| **Pinnipeds** | | | | | | |
| Gray Seal | 0.01540 | 0.00021 | 0.00015 | 0.00837 | 0.01961 | 0.00604 |
| Harbor Seal | 0.01540 | 0.00021 | 0.00015 | 0.00837 | 0.01961 | 0.00604 |

*Take Estimation*

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 141-m distance associated with the Dual Geo-Spark 2000X) to the Level B harassment criterion and the total length of the survey trackline are then used to calculate the total ensonified area, or zone of influence (ZOI) around the survey vessel.

Attentive Energy estimates that proposed surveys will complete a total of 3,028 km survey trackline during proposed HRG surveys. Based on the maximum estimated distance to the Level B harassment threshold of 141-m (Table 5) and the total survey length, the total ensonified area is therefore 854 km² based on the following formula:

$$Mobile\ Source\ ZOI = (Total\ survey\ length \times 2r) + \pi r^2$$

Where:

total survey length= the total distance of the survey track lines within the lease area; and

r = the maximum radial distance from a given sound source to the Level B harassment threshold.

As described above, this is a 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.

The number of marine mammals expected to be incidentally taken during the total survey is then calculated by estimating the number of each species predicted to occur within the ensonified area (animals/km²), incorporating the maximum seasonal estimated marine mammal densities as described above. 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 with the resulting proposed take of marine mammals is shown below in Table 6:

$$Estimated\ Take = D \times ZOI$$

Where:

*D* = average species density (per km²); and

*ZOI* = maximum daily ensonified area to relevant thresholds.

TABLE 6—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

| Species | Abundance * | Estimated level B takes | Total | |
|---|---|---|---|---|
| | | | Level B takes proposed for authorization | Percent of abundance |
| North Atlantic right whale | 368 | 3 | 3 | 0.82 |
| Humpback whale | 1,396 | 1 | †2 | 0.14 |
| Fin whale | 6,802 | 3 | 3 | <0.1 |
| Sei whale | 6,292 | 0 | †2 | <0.1 |
| Minke whale | 21,968 | 2 | 2 | <0.1 |
| Sperm whale | 4,349 | 0 | †2 | <0.1 |
| Long-finned pilot whale | 39,215 | 4 | †15 | <0.1 |
| Bottlenose dolphin (W.N. Atlantic Offshore) [a] | 62,851 | 38 | 38 | <0.1 |
| Common dolphin | 172,974 | 162 | 162 | <0.1 |
| Atlantic white-sided dolphin | 93,233 | 26 | 26 | <0.1 |
| Atlantic spotted dolphin | 39,921 | 5 | †31 | <0.1 |
| Risso's dolphin | 32,215 | 1 | †9 | <0.1 |
| Harbor porpoise | 95,543 | 65 | 65 | <0.1 |
| Harbor seal | 61,336 | 13 | 13 | <0.1 |
| Gray seal [a] | 451,431 | 13 | 13 | <0.1 |

* The abundances in this column are based on the NMFS draft 2021 SAR.
† Take request based on average group size using sightings data from Palka *et al.* (2017, 2021) and CETAP (1982). See Appendix C for data.
[a] This abundance estimate is the total stock abundance (including animals in Canada). The NMFS stock abundance estimate for US population only is 27,300.

The take numbers proposed for authorization in Table 6 are consistent with those requested by Attentive Energy. NMFS concurs with Attentive Energy's method of revising take estimates to reflect mean group size where the estimated takes were less than a typical group size (Palka *et al.,* 2017, 2021; CETAP 1982).

**Proposed Mitigation**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

*Proposed Mitigation Measures*

NMFS proposes that the following mitigation measures be implemented during Attentive Energy's planned marine site characterization surveys. Pursuant to section 7 of the ESA, Attentive Energy is also required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Marine Mammal Exclusion Zones and Level B Harassment Zones

Marine mammal Exclusion Zones would be established around the HRG survey equipment and monitored by protected species observers (PSOs). These PSOs will be NMFS-approved visual PSOs. Based upon the acoustic source in use (impulsive: sparkers), a minimum of one PSO must be on duty on the source vessel during daylight hours and two PSOs must be on duty on the source vessel during nighttime hours. These PSO will monitor Exclusion Zones based upon the radial distance from the acoustic source rather than being based around the vessel itself. The Exclusion Zone distances are as follows:

- A 500-m Exclusion Zone for North Atlantic right whales during use of specified acoustic sources (impulsive: sparkers).
- A 100-m Exclusion Zone for all other marine mammals (excluding NARWs) during use of specified acoustic sources (except as specified below).

All visual monitoring must begin no less than 30 minutes prior to the initiation of the specified acoustic source and must continue until 30 minutes after use of specified acoustic sources ceases.

If a marine mammal were detected approaching or entering the Exclusion Zones during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be

included in the site-specific training to be provided to the survey team.

Ramp-Up of Survey Equipment and Pre-Clearance of the Exclusion Zones

When technically feasible, a ramp-up procedure would be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The ramp-up procedure would be used in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. When technically feasible, the power would then be gradually turned up and other acoustic sources would be added. All ramp-ups shall be scheduled so as to minimize the time spent with the source being activated.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective Exclusion Zone. Ramp-up will continue if the animal has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for harbor porpoise and 30 minutes for all other species).

Attentive Energy would implement a 30 minute pre-clearance period of the Exclusion Zones prior to the initiation of ramp-up of HRG equipment. The operator must notify a designated PSO of the planned start of ramp-up not less than 60 minutes prior to the planned ramp-up. This would allow the PSOs to monitor the Exclusion Zones for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Attentive Energy must receive confirmation from the PSO that the Exclusion Zone is clear prior to proceeding. During this 30 minute pre-start clearance period, the entire applicable Exclusion Zones must be visible. The exception to this would be in situations where ramp-up may occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation may occur at night only where operational planning cannot reasonably avoid such circumstances.

During this period, the Exclusion Zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective Exclusion Zone. If a marine mammal is observed within an Exclusion Zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for harbor porpoise and 30 minutes for all other species). If a marine mammal enters the Exclusion Zone during ramp-up, ramp-up activities must cease and the source must be shut down. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones. The prestart clearance requirement does not include small delphinids (genera *Stenella, Lagenorhynchus, Delphinus,* or *Tursiops*) or seals.

The pre-clearance zones would be:

- 500-m for all ESA-listed species (North Atlantic right, sei, fin, sperm whales); and
- 100-m for all other marine mammals.

If any marine mammal species that are listed under the ESA are observed within the clearance zones, the clock must be paused. If the PSO confirms the animal has exited the zone and headed away from the survey vessel, the clock that was paused may resume. The pre-clearance clock will reset if the animal dives or visual contact is otherwise lost.

If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable Exclusion Zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Activation of survey equipment through ramp-up procedures may not occur when visual detection of marine mammals within the pre-clearance zone is not expected to be effective (*e.g.,* during inclement conditions such as heavy rain or fog).

The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment (Table 5) would be required if a marine mammal is sighted entering or within its respective Exclusion Zone(s). Any PSO on duty has the authority to call for a shutdown of the acoustic source if a marine mammal is detected within the applicable Exclusion Zones. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.

The shutdown requirement is waived for small delphinids (belonging to the genera of the Family *Delpinidae: Delphinus, Lagenorhynchus, Stenella, or Tursiops*) and pinnipeds if they are visually detected within the applicable Exclusion Zones. If a species for which authorization has not been granted or a species for which authorization has been granted but the authorized number of takes have been met approaches or is observed within the applicable Exclusion Zone, shutdown would occur. In the event of uncertainty regarding the identification of a marine mammal species (*i.e.,* such as whether the observed marine mammal belongs to *Delphinus, Lagenorhynchus, Stenella, or Tursiops* for which shutdown is waived), PSOs must use their best professional judgement in making the decision to call for a shutdown.

Upon implementation of a shutdown, the sound source may be reactivated after the marine mammal has been observed exiting the applicable Exclusion Zone or following a clearance period of 15 minutes for harbor porpoise and 30 minutes for all other species where there are no further detections of the marine mammal.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* parametric sub-bottom profilers, sonar, Echosounder, etc.).

Seasonal Operating Requirements

As described above, a section of the proposed survey area partially overlaps with a portion of a North Atlantic right whale SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. The survey vessel, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. Members of the monitoring team would also

monitor the NMFS North Atlantic right whale reporting systems for the establishment of Dynamic Management Areas (DMA). NMFS may also establish voluntary right whale Slow Zones any time a right whale (or whales) is acoustically detected. Attentive Energy should be aware of this possibility and remain attentive in the event a Slow Zone is established nearby or overlapping the survey area (Table 7).

TABLE 7—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREAS

| Survey area | Species | DMA restrictions | Slow zones | SMA restrictions |
|---|---|---|---|---|
| Lease Area ....<br>ECR North .....<br>ECR South ..... | North Atlantic right whale (*Eubalaena glacialis*). | If established by NMFS, all of Attentive Energy's vessel will abide by the described restrictions | | N/A.<br>November 1 through July 31 (Raritan Bay).<br>N/A. |

More information on Ship Strike Reduction for the North Atlantic right whale can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The proposed survey would occur in an area that has been identified as a biologically important area for migration for North Atlantic right whales. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area and the relatively low amount of noise generated by the survey, the survey is not expected to appreciably reduce the quality of migratory habitat or to negatively impact the migration of North Atlantic right whales, thus additional mitigation to address the proposed survey's occurrence in North Atlantic right whale migratory habitat is not warranted.

Vessel Strike Avoidance

Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Survey vessel crewmembers responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Attentive Energy will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of additional submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to 1) distinguish marine mammal from other phenomena, and 2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals. The vessel, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes, including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- The vessel must reduce speed to 10-knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- The vessel must maintain a minimum separation distance of 500-m (1,640-ft) from right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10-knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.
- The vessel must maintain a minimum separation distance of 100-m (328-ft) from non-ESA-listed baleen whales.
- The vessel must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50-m (164-ft) from all other marine mammals, with an understanding that, at times, this may not be possible (*e.g.,* for animals that approach the vessel, bow-riding species).
- When marine mammal are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, daily and as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessel will abide by speed restrictions in the DMA.

Training

All PSOs must have completed a PSO training program and received NMFS approval to act as a PSO for geophysical surveys. Documentation of NMFS approval and most recent training certificates of individual PSOs' successful completion of a commercial PSO training course must be provided upon request. Further information can

be found at *www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-observers.* In the event where third-party PSOs are not required, crew members serving as lookouts must receive training on protected species identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements.

Attentive Energy shall instruct relevant vessel personnel with regard to the authority of the marine mammal monitoring team, and shall ensure that relevant vessel personnel and the marine mammal monitoring team participate in a joint onboard briefing (hereafter PSO briefing), led by the vessel operator and lead PSO, prior to beginning survey activities to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, safety and operational procedures, and IHA requirements are clearly understood. This PSO briefing must be repeated when relevant new personnel (*e.g.,* PSOs, acoustic source operator) join the survey operations before their responsibilities and work commences.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. All vessel crew members must be briefed in the identification of protected species that may occur in the survey area and in regulations and best practices for avoiding vessel collisions. Reference materials must be available aboard the project vessel for identification of listed species. The expectation and process for reporting of protected species sighted during surveys must be clearly communicated and posted in highly visible locations aboard the project vessel, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, and/or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

*Proposed Monitoring Measures*

Attentive Energy must use independent, dedicated, trained PSOs, meaning that the PSOs 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 vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars or night-vision equipment and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Any observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Attentive Energy must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but Attentive Energy is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

During good conditions (*e.g.,* daylight hours; Beaufort sea state 3 or less), PSOs shall conduct observations when the specified acoustic sources are not operating for comparison of sighting rates and behavior with and without use of the specified acoustic sources and between acquisition periods, to the maximum extent practicable.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including Exclusion Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Exclusion Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

At a minimum, Attentive Energy plans to use a PSO during all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), one PSO must be on duty during daylight operations on the survey vessel, conducting visual observations at all times on the active survey vessel during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Exclusion Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard the vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Proposed Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

*Proposed Reporting Measures*

Attentive Energy shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they

changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information submitted in interim monthly reports (if required) as well as additional data collected. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, nmfs.gar.incidental-take@noaa.gov* and *ITP.Harlacher@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel name (source vessel), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. The lease number;
4. PSO names and affiliations;
5. Date and participants of PSO briefings;
6. Visual monitoring equipment used;
7. PSO location on vessel and height of observation location above water surface;
8. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
9. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
10. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval
11. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
12. Water depth (if obtainable from data collection software);
13. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
14. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
15. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

Upon visual observation of any marine mammal, the following information must be recorded:

1. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
2. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
3. PSO who sighted the animal;
4. Time of sighting;
5. Initial detection method;
6. Sightings cue;
7. Vessel location at time of sighting (decimal degrees);
8. Direction of vessel's travel (compass direction);
9. Speed of the vessel(s) from which the observation was made;
10. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;
11. Species reliability (an indicator of confidence in identification);
12. Estimated distance to the animal and method of estimating distance;
13. Estimated number of animals (high/low/best);
14. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
15. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
16. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);
17. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, etc.) and time and location of the action;
18. Equipment operating during sighting;
19. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and
20. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, Attentive Energy must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866–755–6622) within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that Attentive Energy personnel discover an injured or dead marine mammal, regardless of the cause of injury or death or in the event that personnel involved in the survey activities discover an injured or dead marine mammal, Attentive Energy must report the incident to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Attentive Energy must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;
3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);
5. Status of all sound sources in use;
6. 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;
7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
8. Estimated size and length of animal that was struck;
9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;
10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
11. 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
12. To the extent practicable, photographs or video footage of the animal(s).

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected by the status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, and ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 3, given that some of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are included as separate subsections below.

NMFS does not anticipate that serious injury or mortality would result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole, refer to Potential Effects and Estimated Take section for further discussion.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141-m. Although this distance is assumed for all survey activity in estimating take numbers proposed for authorization and evaluated here, in reality, the Dual Geo-Spark 2000X would likely not be used across the entire 24-hour period and across all 56 days. As noted in their application, the other acoustic sources Attentive Energy has included in their application have minimal Level B harassment zones. Therefore, when not using the sparker, the ensonified area surrounding the vessel is small compared to the overall distribution of the animals and ambient sound in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed survey area and there are no feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any ESA-listed marine mammals in the proposed survey area.

*North Atlantic Right Whales*

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the proposed survey area overlaps a migratory corridor BIA for North Atlantic right whales. Due to the fact that the proposed survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the proposed survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Attentive Energy's proposed activities. The 500-m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141-m, and

thereby minimizes the potential for behavioral harassment of this species.

As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use. The proposed authorizations for Level B harassment takes of North Atlantic right whale are not expected to exacerbate or compound upon the ongoing UME. The limited North Atlantic right whale Level B harassment takes proposed for authorization are expected to be of a short duration, and given the number of estimated takes, repeated exposures of the same individual are not expected. Further, given the relatively small size of the ensonified area during Attentive Energy's proposed activities, it is unlikely that North Atlantic right whale prey availability would be adversely affected. Accordingly, NMFS does not anticipate North Atlantic right whales takes that would result from Attentive Energy's proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

*Other Marine Mammal Species With Active UMEs*

As noted previously, there are several active UMEs occurring in the vicinity of Attentive Energy proposed survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The required mitigation measures are expected to reduce the number and/or severity of proposed takes for all species listed in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. As discussed previously, take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use, and is not proposed for authorization. Implementation of required mitigation would further reduce this potential. Therefore, NMFS is not proposing any Level A harassment for authorization.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

*Biologically Important Areas for Other Species*

As previously discussed, impacts from the proposed project are expected to be localized to the specific area of activity and only during periods of time where Attentive Energy's acoustic sources are active. While areas of biological importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect this proposed action to affect these areas. This is due to the combination of the mitigation and monitoring measures being required of Attentive Energy's as well as the location of these biologically important areas. All of these important areas are found outside of the range of this survey area, as is the case with fin whales and humpback whales (BIAs found further north), and, therefore, not expected to be impacted by Attentive Energy's proposed survey activities.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed for authorization;
- Foraging success is not likely to be impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for North Atlantic right whales, the activities would occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration; and
- The proposed mitigation measures, including effective visual monitoring, and shutdowns are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take (by Level B harassment only) of 15 marine mammal species (with 15 managed stocks). The total amount of takes proposed for

authorization relative to the best available population abundance is less than 1 percent for all stocks (Table 7).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that only small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS OPR is proposing to authorize take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Attentive Energy for conducting marine site characterization surveys off the coast of New York and New Jersey from August 1, 2022 to July 31, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

**Request for Public Comments**

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed marine site characterization surveys. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 21, 2022.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

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**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC074]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Tillamook South Jetty Repairs in Tillamook Bay, Oregon

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

**ACTION:** Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

**SUMMARY:** NMFS has received a request from the U.S. Army Corps of Engineers (USACE)—Portland District (Corps) for authorization to take marine mammals incidental to 2 years of activity associated with Tillamook South Jetty Repairs in Tillamook Bay, Oregon. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two one-year incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal for each IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than July 27, 2022.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.renytysonmoore@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method,

to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

## National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed actions (*i.e.,* the issuance of two IHAs) with respect to potential impacts on the human environment.

These actions are consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA requests.

## Summary of Request

On February 11, 2022, NMFS received a request from the Corps for two one-year IHAs to take marine mammals incidental to repairs of the Tillamook South Jetty in Tillamook Bay, Oregon. The application was deemed adequate and complete on May 23, 2022. The Corps' request is for take of five species of marine mammals by Level B harassment and, for a subset of these species (*i.e.,* harbor seals (*Phoca vitulina richardii*), northern elephant seals (*Mirounga angustriostris*), and harbor porpoises (*Phocoena phocoena*)), take by Level A harassment. Neither the Corps nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

## Description of Proposed Activity

### *Overview*

The Corps constructed, and continues to maintain, two jetties at the entrance of Tillamook Bay, Oregon to provide reliable navigation into and out of the bay. A Major Maintenance Report (MMR) was completed in 2003 to evaluate wave damage to the jetties and provide design for necessary repairs. Some repairs to the North Jetty were completed in 2010, and further repairs to the North Jetty root and trunk began in January 2022. The Tillamook South Jetty Repairs Project (*i.e.,* the ''proposed activities'') would complete critical repairs to the South Jetty, as described in the MMR, with a focus on rebuilding the South Jetty head. Work would consist of repairs to the existing structures within the original jetty footprints (*i.e.,* trunk repairs and the construction of a 100-foot cap to repair the South Jetty Head), with options to facilitate land- and water-based stone transport, storage, and placement operations. A temporary material offload facility (MOF), which would be approximately 15 meters (m) (50 feet (ft)) by 30 m (100 ft), would be constructed to transfer jetty rock from barges to shore at the South Jetty.

The two IHAs requested by the Corps would be associated with the construction (Year 1 IHA) and removal (Year 2 IHA) of the temporary MOF. Construction of the MOF would involve vibratory (preferred) and/or impact pile driving of up to 10 12-inch H piles, 24 24-inch timber or steel pipe piles, and 250 24-inch steel sheets (type NZ, AZ, PZ, or SCZ), and is anticipated to occur during the first year of the project (November 1, 2022 through October 31, 2023). Removal of the MOF would involve vibratory extraction of all installed piles and sheets and is anticipated to occur between November 1, 2024 and October 31, 2025. The Corps proposed work windows are between November and February and between July and August each year to adhere to terms and conditions outlined in the U.S. Fish and Wildlife Service (USFWS) Biological Opinion (BiOp) to minimize potential take of the Western snowy plover (WSP), currently listed as threatened under the Endangered Species Act (ESA). Sounds resulting from pile installation and removal from these proposed activities may result in the incidental take of marine mammals by Level A and Level B harassment.

### *Dates and Duration*

Completion of the South Jetty repairs is anticipated to take multiple construction seasons. The primary in-water sound effects would be associated with construction (Year 1 IHA) and deconstruction (Year 2 IHA) of a MOF at Kincheloe Point. MOF construction/deconstruction would only occur during the aforementioned work windows and when weather conditions would not restrict watercraft operations or compromise crew safety. The Corps anticipates commencing work in the autumn of 2022. Construction of the

MOF is anticipated to take 20 to 23 days and to occur between November 1, 2022 and February 15, 2023 or between July 1, 2023 and August 31, 2023. Deconstruction of the MOF is estimated to take 13 days and is anticipated to occur between November 1, 2024 and February 15, 2025 or between July 1, 2025 and August 31, 2025. The Corps plans to conduct pile driving only during daylight hours (from sunrise to sunset).

*Specific Geographic Region*

Tillamook Bay is located on the Oregon Coast near the city of Garibaldi in Tillamook County, Oregon (Figure 1). The Bay is protected from the open ocean by shoals and a sandbar called the Bayocean Peninsula. It is generally very shallow, with depths ranging from 0.3 to 2.1 m (1 to 7 ft) throughout most of the Bay, but reaching depths of up to 10 m (32 ft) in the South, Main, and Bay City Channels. The sediment in Tillamook Bay consists primarily of sand or mud, and there are several sea grass beds present in the region. Tillamook Bay provides a safe harbor for the water-dependent economies of local and state entities. It is the third largest bay in Oregon and sustains significant biological and economic resources. The proposed activities would be located on the Bayocean Split, Tillamook County, Oregon (Tillamook Bay, River Mile 1; Section 18, 19, and 20 of Township 1N, Range 10W; Latitude: 45.565500, Longitude: −123.948983).

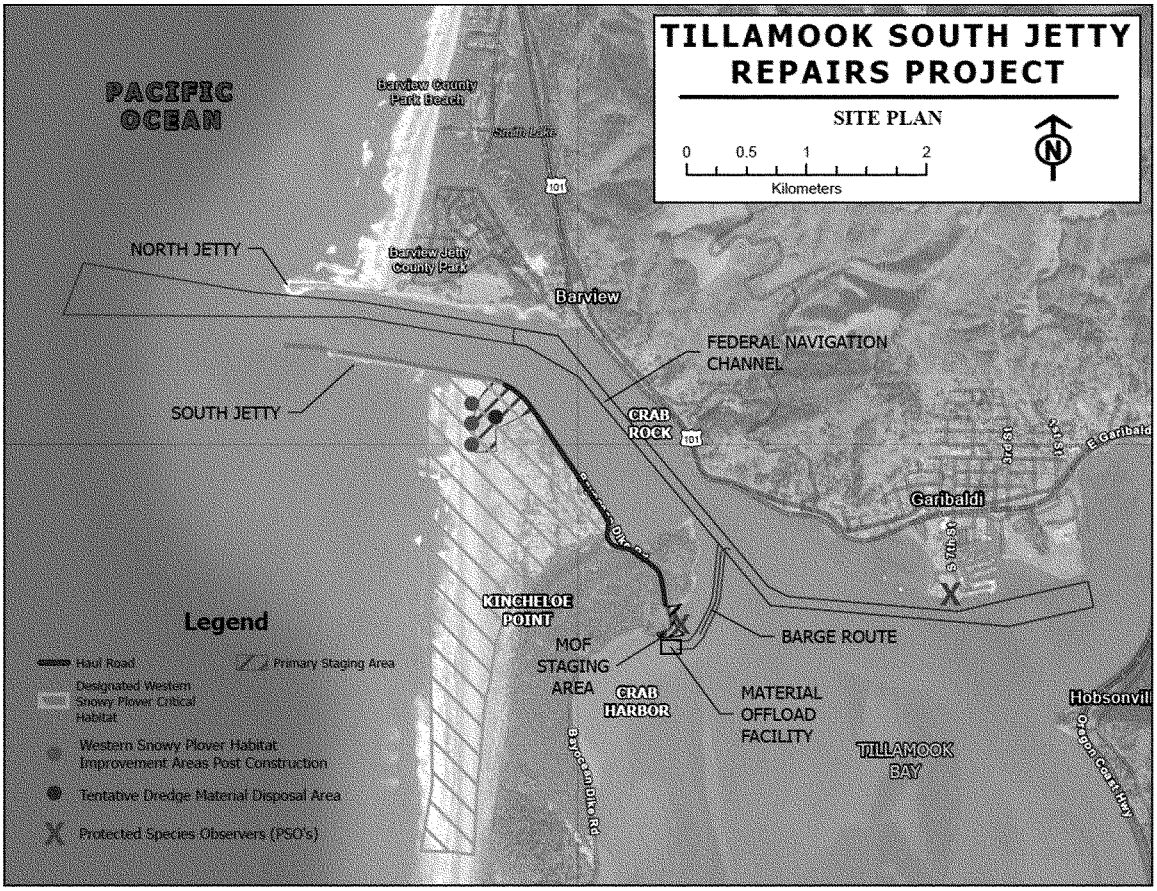


**Figure 1. Overview of Proposed Activity Elements and Wetland Features at the South Jetty**

The Port of Garibaldi is located approximately 3.2 kilometers (km) (2 miles (mi)) east of the entrance to Tillamook Bay and contains a lumber mill, seafood processing plants, marine repair shops, a commercial and charter fishing marina, and a public boat launch. The United States Coast Guard (USCG) Station Tillamook Bay is also located at the Port of Garibaldi; operations include towing vessels and assisting recreational and commercial boaters throughout the year with five search and rescue boats. The U.S. Highway 101 corridor is adjacent to Tillamook Bay, passing through the coastal cities of Bay City, Garibaldi, and Barview closest to the South Jetty (see Figure 1–1 in the Corps' application). The nearest residences to the proposed activity area are located in Barview, approximately 610 m (2,000 ft) away on the opposite side of the entrance channel.

*Detailed Description of Specific Activity*

The purpose of the proposed activities is to protect the structural integrity of the Tillamook South Jetty and to improve navigation conditions at the channel entrance through major maintenance repair activities. As with most jetties along the Oregon coast, the Tillamook South Jetty was constructed to facilitate safe navigation and support a more stable entrance channel at the mouth of Tillamook Bay. It was

constructed in phases between 1969 and 1979 to a final length of 2,046 m (8,025 ft). The South Jetty currently has a total length that is approximately 320 m (1,050 ft) shorter than the authorized footprint, and the head is severely damaged with an estimated recession rate of approximately 8.5 m (28 ft) per year. As with the Tillamook North Jetty, there has also been erosion of the jetty trunk. No repairs have occurred since the original construction. The 2003 MMR report and subsequent 2014 Corps inspection recommended several repair actions that are the basis for the proposed construction activities. Repair activities would consist of two main components at the South Jetty: trunk repairs and construction of a 30 m (100-ft) cap to repair the South Jetty head.

In addition to stone placement at the South Jetty head and trunk, related construction activities associated with these repairs, specifically the delivery and storage of new stone, include the construction of a temporary MOF near Kincheloe Point; channel dredging to maintain access to MOF; roadway improvements and possible turnouts along Bayocean Dike Road; and utilization of two upland staging and stockpiling areas: one primary staging area adjacent to the South Jetty trunk and a smaller staging area near the MOF. The Contractor will ultimately decide on the means and methods for construction, within these constraints and the conditions outlined in the proposed IHAs. Given uncertainty about which features will be implemented to facilitate site access, the Corps' application assumes a temporary MOF, which requires pile driving, would be constructed to accommodate barge operations. The proposed activities also include removal and site restoration for each of the temporary construction features upon project completion. As discussed in further detail below, NMFS assumes that take of marine mammals is likely to result only from pile driving activities conducted as part of the MOF construction/removal and not from activities related to the delivery, storage, or placement of jetty stone.

*Construction Staging Areas*

Jetty repairs and associated construction elements require areas for equipment and supply staging and storage, parking areas, access roads, scales, general yard requirements, and jetty stone stockpile areas. There would be one primary staging area adjacent to the South Jetty trunk and a smaller staging area near the MOF (Figure 1). Temporary erosion controls would be put in place before any alteration of the sites. An Erosion and Sediment Control Plan (ESCP) would outline facilities and Best Management Practices (BMPs) that would be implemented and installed prior to any ground-disturbing activities on the project site, including mobilization. These erosion controls would prevent pollution caused by surveying or construction operations and ensure sediment-laden water do not leave the project site, enter Tillamook Bay, or impact aquatic and terrestrial wildlife.

Ocean barging is anticipated to be the primary method of material and equipment transport; however, Bayocean Dike Road (Figure 1) would be used to access the staging areas and work sites. Prior to construction, the road would be improved to facilitate the necessary level of construction traffic. Specific details and locations of road improvement actions would depend on the condition of the road at the start of construction, however any improvements or alterations would avoid wetlands and waters of the U.S. to the maximum extent practicable. Roadway improvements would also avoid any locations identified as having significant cultural resources.

There are no known pinnipeds haul-outs on the sites proposed for these staging areas or near the proposed access roads (see Description of Marine Mammals in the Area of Specified Activities). Therefore, upland activities related to the development of the staging areas and access roads are not anticipated to impact any marine mammal species, and are not considered further in our analysis.

*Temporary Material Offloading Facility*

A temporary MOF is needed to transfer jetty rock from barges to shore at the South Jetty. The MOF would provide moorage for barges and a structure for crane support. The preferred location of the MOF is on the south side of Kincheloe Point, on the site of a former staging area (Figure 1). Detailed design of the MOF would be completed closer to the time of construction. The discussion below is based on general assumptions about likely design elements. These assumptions represent a conservative scenario for purposes of analysis.

The offloading platform could require the use of an anchor line moorage or dolphins. The platform would be approximately 15 m (50 ft) by 30 m (100 ft) and would be constructed using a sheet pile perimeter wall, installed using a vibratory hammer. A maximum of 24, 24-inch timber or steel piles would be installed as mooring dolphins, up to 10, 12-inch steel H-piles will be installed for support, and up to 250, 24-inch steel sheets (type NZ, AZ, PZ, or SCZ) would be driven for the perimeter wall. The maximum pile diameter would be 24 inches, and caps (or other deterrence devices) would be installed on each pile to discourage birds from perching. The platform would be constructed within the confines of the perimeter wall by filling in the area with backfill. The H-piles would be shoreward of installed sheets and most likely driven into the fill material with very little water, if any. A contractor would be limited by these general constraints, but the final MOF design would be per their discretion, largely based on site conditions, material availability, and cost. The MOF would be sited to avoid direct impacts to eelgrass during construction. In-water noise incidental to vibratory and impact pile driving of the MOF is anticipated to result in Level A harassment and/or Level B harassment.

Vibratory hammers are the preferred method of pile installation. However, impact driving may be required for steel pipe piles if vibratory means prove infeasible (impact pile driving would not be required for any other pile type). For any impact driving of steel piles, a confined bubble curtain will be used to reduce in-water sound. Pile driving to construct the MOF is anticipated to take 20 (vibratory installation methods only) to 23 (vibratory and impact installation methods) days over the course of a month (Table 1) and would occur under the first IHA (Year 1). Multiple piles would not be driven concurrently. Vibratory hammers would be used to remove the temporary MOF and is anticipated to take an additional 13 days over the course of a month (Table 1). Deconstruction would occur under the second IHA (Year 2).

TABLE 1—SUMMARY OF PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR THE CONSTRUCTION AND DECONSTRUCTION OF THE TEMPORARY MOF

| Pile type | Size | Number of sheets/ piles | Vibratory installation duration per pile/ sheet (minutes) | Vibratory removal duration per pile/ sheet (minutes) | Potential impact strikes per pile, if needed | Production rate (piles/day) | | | Range of installation days anticipated [1] | | Range of vibratory removal days anticipated [1] |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | Installation (vibratory) | Installation (impact) | Removal (vibratory) | Vibratory only | Vibratory and impact | |
| AZ Steel Sheet [2] .. | 24-inch | 250 | 10 ..... | 3 ..... | ..... | 25 | ..... | 50 | 10–12 | 10–12 | 5–7 |
| Timber or Steel Pile. | 24-inch | 24 | 15 ..... | 5 ..... | 533 | 8 | 4 | 12 | 3–6 | 6–9 | 2–4 |
| H-Pile ..... | 12-inch | 10 | 10 ..... | 3 ..... | ..... | 10 | ..... | 10 | 1–2 | 1–2 | 1–2 |
| Project totals | | 284 | 49.83 hours. | 16.17 hours. | ..... | ..... | ..... | ..... | 14–20 | 17–23 | 8–13 |

[1] The minimum days of installation and removal are based on the expected production rates. The maximum days of installation and removal are estimated assuming built in contingency days, which have been added into the construction schedule, are needed.
[2] Or comparable.

*Dredging*

In order to allow fully loaded barges to access the MOF, dredging would occur prior to the construction of the platform. Based on the conditions at the preferred MOF location, it is conservatively estimated that no more than 5,000 cubic yards of material would be dredged. The barge route from the main channel to the MOF will be sited to avoid potential adverse effects to eelgrass to the maximum extent practicable. The area dredged would include the area adjacent to the shore where the barge would be moored (see Figure 1–4 in the Corps' application). Sandy dredged material removed to facilitate barge access would be placed in the Primary Staging Area as indicated in Figure 1–3 in the Corps' application and used to fill depressions and create better habitat for WSP post construction.

The scope and duration of dredging would be limited to the minimum area and amount of time needed to achieve project purposes. Initial MOF dredging would take approximately one week to complete, and will occur between July 15 and March 15 to avoid the peak timing for juvenile coho salmon outmigration. Ongoing maintenance will occur as needed. Only mechanical dredging would be permissible, and dredges would be operated to limit dredge spillover.

The Corps will work to meet state water quality standards. To minimize water turbidity and the potential for entrainment of organisms during dredging for the MOF, the clamshell bucket or head of the dredge would remain on the bottom to the greatest extent possible and only be raised 1 m (3 ft) off the bottom when necessary for dredge operations. Turbidity levels will be monitored via visual observations to identify any adverse detectable change in water quality. A hand-held turbidity meter will be deployed and used during MOF dredging and fill activities. No more than 10 percent cumulative increase in natural stream turbidities may be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction, or other legitimate activities and which cause the standard to be exceeded may occur provided all practicable turbidity control techniques have been applied. See Oregon Administrative Rules (OAR) 340–041–0036.

While dredging may produce underwater noise above the relevant harassment threshold (*i.e.,* between 150 and 180 dB; Clark *et al.,* 2002; Miles *et al.,* 1986), the noise produced by dredging is similar to other common on- and in-water industrial activities typically occurring in the area. Additionally, dredging will only occur in a relatively small and confined area of Tillamook Bay over a short duration of time (*i.e.,* 5 days), limiting the potential for impacts. Therefore, incidental takes of marine mammals are not anticipated or proposed to be authorized for dredging activities, and this activity is not considered further in our analysis.

*South Jetty Maintenance and Repairs*

Significant repairs are proposed along the South Jetty, where the majority of work would occur from STA 70+00 westward. These stations are enumerated in 30 m (100-ft) increments such that STA 71+00 would be 30 m (100 ft) seaward from STA 70+00. Additional repairs to the jetty trunk between Stations 43+00 and 49+00 are also planned. The jetty cap will be from STA 77+00 to 77+75 to elevation + 5.5 m (18 ft) relative to North American Vertical Datum of 1988 (NAVD88). From the final head station centerline, the end of the jetty will be built out in a 6 m (20 ft) radius to elevation + 5.5 m (18 ft) NAVD88. The crest width of the jetty cap would be 12 m (40 ft). The crest width of the jetty trunk would be 9 m (30 ft) with a target crest elevation of + 5.5 m (18 ft) NAVD88. The average stone density would be approximately 180 pounds (lbs)/ft$^3$, and the total quantity of stone required for the proposed activities is estimated at 31,000 cubic yards (~76,000 tons). Stone placement at the South Jetty would take just under 150 working days.

While placement of jetty stone could produce noise, NMFS has determined that sounds produced from this action would not exceed marine mammal thresholds beyond 10 m (33 ft) from the source in the water and beyond 100 m (328 ft) from the source in the air (86 FR 22151; April 27, 2021). There are no known pinniped haul-outs or other known important marine mammal habitats within the vicinity of the South Jetty (see Description of Marine Mammals in the Area of Specified Activities) limiting the potential for impacts from stone placement. Therefore, incidental takes of marine mammals are not anticipated or proposed to be authorized for jetty stone placement, and are not considered further in our analysis.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

## Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead

of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for these activities, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or 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. Pacific SARs (*e.g.,* Carretta *et al.* 2021) or Alaska SARs (*e.g.,* Muto et al. 2020). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.* 2021, Muto *et al.,* 2020) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

| Common name | Scientific name | MMPA stock | ESA/MMPA status; strategic (Y/N) [1] | Stock abundance Nbest, (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| Family Phocoenidae (porpoises): | | | | | | |
| Harbor Porpoise | *Phocoena phocoena* | Northern OR/WA Coast | -,-, N | 21,487 (0.44; 15,123; 2011) | 151 | ≥3.0 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Otariidae (eared seals and sea lions): | | | | | | |
| California sea lion | *Zalophus californianus* | U.S. | -,-, N | 257,606 (N/A.; 233,515; 2014) | 14,011 | >320 |
| Steller sea lion | *Eumetopias jubatus* | Eastern | -,-, N | 43,201 (N/A; 43,201; 2017) | 2,592 | 112 |
| Family Phocidae (earless seals): | | | | | | |
| Harbor seal | *Phoca vitulina richardii* | OR/CA Coastal | -, N | 24,732 (0.12; N/A; 1999) | UND | 10.6 |
| Northern elephant seal | *Mirounga angustirostris* | California Breeding | -,-, N | 187,386 (N/A; 85,369; 2013) | 5,122 | 5.3 |

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable (N.A.).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all 5 species (with 5 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species (26 marine mammal species and 27 marine mammal stocks) that could potentially occur in the proposed survey areas are included in Table 3–3 of the Corps' application. The majority of the species listed in the Corps' table are unlikely to occur in the project vicinity. For example, numerous cetaceans (*i.e.,* sei whale, *Balaenoptera borealis borealis;* fin whale, *Balaenoptera physalus physalus;* Risso's dolphin, *Grampus griseus;* common bottlenose dolphin, *Tursiops truncatus truncatus;* striped dolphin, *Stenella coeruleoalba;* common dolphin, *Delphinus delphis;* short-finned pilot whale, *Globicephala macrorhynchus;* Baird's beaked whale, *Berardius bairdii;* Mesoplodont beaked whale, *Mesoplodon spp.;* Cuvier's beaked whale, *Ziphius cavirostris;* pygmy sperm whale, *Kogia breviceps;* dwarf sperm whale, *Kogia sima;* sperm whale, *Physeter macrocephalus*) are only encountered at the continental slope (>20 km/12 mi offshore) or in deeper waters offshore and would not be affected by construction activities. Other species may occur closer nearshore but are rare or infrequent seasonal inhabitants off the Oregon coast (*i.e.,* minke whale, *Balaenoptera acutorostrata scammoni;* Pacific white-sided dolphin, *Lagenorhynchus obliquidens;* Northern right-whale dolphin, *Lissodelphis borealis;* killer whale, *Orcinus orca* (''Eastern North Pacific Southern Resident Stock''); Dall's porpoise, *Phocoenoides dalli dalli*). Given these considerations, the temporary duration of potential pile driving, and noise isopleths that would not extend beyond the bay entrance (please see Estimated Take), there is no reasonable expectation for the proposed activities to affect the above species and they will not be addressed further.

While ten marine mammal species could occur in the vicinity of the proposed project activities (*i.e.,* harbor seals; Northern elephant seal; Steller sea lion; California sea lion; humpback whales, *Megaptera novaeangliae;* fin whales, *Balaenoptera physalus physalus;* gray whales, *Eschrichtius robustus;* blue whales, *Balaenoptera musculus musculus;* killer whales, *Orcinus orca;* and harbor porpoises), Tillamook Bay is relatively shallow and

noise resulting from the construction/deconstruction of the MOF would be limited to the interior waters of the bay and would not extend to coastal waters. Larger whales (*e.g.,* humpback whales, fin whales, gray whales, blue whales, killer whales) may transit the waters near the coastline but are unlikely inhabitants of Tillamook Bay itself. In reviewing OBIS–SEAMAP (2022) and records for all marine mammals recorded within a 16 km (10 mi) radius of Tillamook Bay, only humpback whales, gray whales, harbor porpoises, California sea lions, Steller sea lions, and harbor seals were commonly reported. Killer whales have only been seen on rare occasions (TinyFishTV, 2014; rempeetube, 2016; Corey.c, 2017), and Dall's porpoise (and northern right whale dolphins have been reported a bit further offshore (Halpin *et al.,* 2009; OBIS–SEAMAP, 2022). Gray whales and humpback whales have been observed in the vicinity of Tillamook Bay, however, they are highly unlikely to enter the relatively shallow waters of Tillamook Bay and be subject to pile driving noise disturbance. Given these considerations, take of these species (*i.e.,* humpback whales, fin whales, gray whales, blue whales, killer whales) is not expected to occur, and they are not discussed further beyond the explanation provided here.

*Harbor Porpoise*

In the Pacific Ocean, harbor porpoise are found in coastal and inland waters from Point Conception, California to Alaska and across to Kamchatka and Japan (Gaskin, 1984). Six harbor porpoise stocks have been designated off California/Oregon/Washington, based on genetic analyses and density discontinuities identified from aerial surveys. While harbor porpoise are rare within Tillamook Bay, if present, animals likely belong to the Northern Oregon/Washington Coast stock, which is delimited from Cape Flattery, Washington (located approximately 320 km (198 mi) north of Tillamook Bay), to Lincoln City, Oregon (located approximately 68 km (42 mi) south of Tillamook Bay) (Carretta *et al.,* 2022).

Entanglement is the primary cause of human-related injury and death for harbor porpoises, however, estimated fishery mortality and serious injury rates are well below PBR. Harbor porpoises are sensitive to disturbance by a variety of anthropogenic sound sources, and the limited range of several U.S. West Coast harbor porpoise stocks makes them particularly vulnerable to potential impacts (see overview in Forney *et al.,* 2017).

Harbor porpoises on the Pacific Northwest coast of the United States are typically found in waters roughly 100–200 m (328–656 ft) deep (NOAA, 2013a; Holdman *et al.* 2018). They occur along the Oregon coast year-around and may be slightly more abundant in summer and exhibit diel or tidal movement patterns related to prey availability (Holdman *et al.,* 2018). Harbor porpoises have been detected within a 16 km (10 mi) radius of the Tillamook Bay entrance channel (Halpin *et al.,* 2009; OBIS–SEAMAP, 2022), and they could potentially occur in the project vicinity during the proposed activities.

*California Sea Lion*

California sea lions are distributed along the North Pacific waters from central Mexico to southeast Alaska, with breeding areas restricted primarily to island areas off southern California (the Channel Islands), Baja California, and in the Gulf of California (Carretta *et al.,* 2021). There are five genetically distinct geographic populations. The population seen in Oregon is the Pacific Temperate population (which comprises the U.S. stock managed by NMFS), which are commonly seen in Oregon from September through May (ODFW, 2015).

The occurrence of the California sea lion along the Oregon coast is seasonal with lowest abundance in Oregon in the summer months, from May to September, as they migrate south to the Channel Islands in California to breed. They are commonly found in Oregon haul-out sites from September to May and during this period, adult and subadult males have been observed in bays, estuaries, and offshore rocks along the Oregon coast. In fact, a few males have been reported in Oregon waters throughout the year (Mate, 1973). The population breeds in the California Channel Islands and most females and young pups remain in that region year-around (Mate, 1973).

The California sea lion stock has been growing steadily since the 1970s. The stock is estimated to be approximately 40 percent above its maximum net productivity level (MNPL = 183,481 animals), and it is therefore considered within the range of its optimum sustainable population (OSP) size (Laake *et al.,* 2018). The stock is also near its estimated carrying capacity of 275,298 animals (Laake *et al.,* 2018). However, there remain many threats to California sea lions including entanglement, intentional kills, harmful algal blooms, and climate change. For example, for each 1 degree Celsius increase in sea surface temperature (SST), the estimated odds of survival declined by 50 perfect for pups and yearlings, while negative SST anomalies resulted in higher survival estimates (DeLong *et al.,* 2017). Such declines in survival are related to warm oceanographic conditions (*e.g.,* El Niño) that limit prey availability to pregnant and lactating females (DeLong *et al.,* 2017). Changes in prey abundance and distribution have been linked to warm-water anomalies in the California Current that have impacted a wide range of marine taxa (Cavole *et al.,* 2016), including California sea lions. For example, between 2013 and 2017, NOAA declared an unusual mortality event (UME) for California sea lions as high mortality of pup and juvenile age classes were documented during this time. NOAA identified changes in the availability of sea lion prey species, particularly sardines, as a contributing factor.

California sea lions may occur in the project vicinity, but there have been no confirmed sightings in Tillamook Bay (Halpin *et al.,* 2009; OBIS–SEAMAP, 2022). The closest known haul out site is at Three Arch Rock, which is approximately 23 km (14 mi) south of the proposed site of the MOF.

*Steller Sea lion*

The Steller sea lion range extends along the Pacific Rim, from northern Japan to central California. For management purposes, Steller sea lions inhabiting U.S. waters have been divided into two DPS: the Western U.S. and the Eastern U.S. Steller sea lions encountered off the Oregon coast are part of the Eastern U.S. Stock, with rookeries in California, Oregon, Washington, Southeast Alaska, and British Columbia (Muto *et al.,* 2021). The Western U.S. stock of Steller sea lions are listed as endangered under the ESA and depleted and strategic under the MMPA. The Eastern U.S. stock (including those living in Oregon) was de-listed in 2013 following a population growth from 18,040 in 1979 to 70,174 in 2010 (an estimated annual growth of 4.18 percent) (NMFS, 2013). A population growth model indicates the eastern stock of Steller sea lions increased at a rate of 4.25 percent per year (95 percent confidence intervals of 3.77–4.72 percent) between 1987 and 2017 based on an analysis of pup counts in California, Oregon, British Columbia, and Southeast Alaska (Muto *et al.,* 2021). This stock is likely within its OSP; however, no determination of its status relative to OSP has been made (Muto *et al.,* 2021).

Off the Oregon coast, Steller sea lions have been observed ashore from the Columbia River south to Rogue Reef and typically inhabit offshore rocks and

islands. There are seven major haul-out sites noted in Oregon during the breeding season, however, there are no known rookery sites near Tillamook Bay (Pitcher *et al.,* 2007). The closest known haul out site is at Three Arch Rock, which is approximately 23 km (14 mi) south of the proposed site of the MOF. Steller sea lions have been detected in Tillamook Bay during marine mammal surveys (Pearson and Verts, 1970; Halpin *et al.,* 2009; Ford *et al.,* 2013) and may occur in the vicinity of the project.

*Harbor Seal*

Harbor seals inhabit coastal and estuarine waters off Baja California, north along the western coasts of the continental U.S., British Columbia, and Southeast Alaska, west through the Gulf of Alaska and Aleutian Islands, and in the Bering Sea north to Cape Newenham and the Pribilof Islands (Caretta *et al.,* 2021). Within U.S. west coast waters, five stocks of harbor seals are recognized: (1) Southern Puget Sound (south of the Tacoma Narrows Bridge); (2) Washington Northern Inland Waters (including Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca); (3) Hood Canal; (4) Oregon/Washington Coast; and (5) California. Seals potentially affected by this activity would be part of the Oregon/Washington Coast stock.

Harbor seals generally are non-migratory, with local movements associated with tides, weather, season, food availability, and reproduction (Scheffer and Slipp, 1944; Fisher, 1952; Bigg 1969, 1981). Harbor seals do not make extensive pelagic migrations, though some long distance movement of tagged animals in Alaska (900 km, 559 mi) and along the U.S. west coast (up to 550 km, 342 mi) have been recorded (Brown and Mate, 1983; Herder, 1986; Womble, 2012). Harbor seals have displayed strong fidelity to haulout sites (Pitcher and Calkins, 1979; Pitcher and McAllister, 1981).

Harbor seals were historically hunted in Oregon as a nuisance to fishermen, however, their numbers have steadily increased since the passage of the MMPA in 1972 (Harvey, 1987; Brown *et al.,* 2005). While harbor seals are still subject to incidental take from commercial fisheries in the region, overall mortality is relatively low. However, the most recent abundance estimate available for this stock dates to 1999 (Carretta *et al.,* 2021).

Harbor seals are one of the most abundant pinnipeds in Oregon and can typically be found in coastal marine and estuarine waters of the Oregon coast throughout the year. On land, they can be found on offshore rocks and islands, along shore, and on exposed flats in the estuary (Harvey, 1987). There is one haul-out site roughly 1.5 km (0.9 mi) east of the proposed MOF that has been historically noted in Tillamook Bay. This haul-out is located on an intertidal sand flat in the middle of the bay (See Figure 4–1 in the Corps' application) and highest utilization has been observed during the May/June reproductive season (B.E. Wright, personal communication, February 12, 2021; ODFW, 2022). This is consistent with other findings noting harbor seals being more abundant in Tillamook Bay during the summer pupping season (Brown and Mate, 1983). There is also evidence that animals may move between Netarts Bay, a prominent feeding site located approximately 15 km (9 mi) south of Tillamook Bay, and Tillamook Bay in the non-pupping season (Brown and Mate, 1983). Therefore, harbor seals are expected to occur in the vicinity of the project.

*Northern Elephant Seal*

The California Breeding Stock of Northern elephant seals breeds and gives birth in California and makes extended foraging trips to areas including coastal Oregon biannually during the fall and spring (Le Boeuf *et al.,* 2000). While both males and females may transit areas off the Oregon coast, males seem to have focal forage areas near the continental shelf break while females typically move further offshore and feed opportunistically at numerous sites while in route (Le Beouf *et al.,* 2000).

Populations of northern elephant seals in the U.S. and Mexico have recovered after being nearly hunted to extinction (Stewart *et al.,* 1994). Northern elephant seals underwent a severe population bottleneck and loss of genetic diversity when the population was reduced to an estimated 10–30 individuals (Hoelzel *et al.,* 2002). Although movement and genetic exchange continues between rookeries, most elephant seals return to natal rookeries when they start breeding (Huber *et al.,* 1991). The California breeding population is now demographically isolated from the Baja California population. No international agreements exist for the joint management of this species by the U.S. and Mexico. The California breeding population is considered to be a separate stock (Carretta *et al.,* 2022).

The population is currently susceptible to incidental take and injury from gillnet and trawl fisheries operating offshore, however, the human-caused mortality is still well below the estimated PBR level.

There have been no recorded sightings of northern elephant seals in the immediate vicinity of Tillamook Bay, however, there have been sightings toward Netarts Bay, located approximately 14 km (9 mi) south of the Tillamook South Jetty, and further offshore (Halpin *et al.,* 2009; OBIS–SEAMAP, 2022). Therefore, northern elephant seals could transit the area.

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

This section includes a discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival

Acoustic effects on marine mammals during the specified activity can occur from impact and vibratory pile driving. The effects of underwater noise from the Corps' proposed activities have the potential to result in Level A and Level B harassment of marine mammals in the action area.

*Description of Sound Sources*

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (µPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level represents the SPL referenced at a distance of 1 m from the source (referenced to 1 µPa), while the received level is the SPL at the listener's position (referenced to 1 µPa).

Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB referenced to 1 micropascal squared per second (re 1 $\mu Pa^2$-s)) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL (SELcum) represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the RMS sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to

ambient sound, which is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI, 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

A recent study of ambient ocean sound for Oregon's nearshore environment observed maximum and minimum levels of 136 dB re 1 µPa and 95 dB re 1 µPa, respectively, with an average level of 113 dB re 1 µPa over a period of one year (Haxel *et al.,* 2011). This level could vary given the presence of different recreational and commercial vessels (*e.g.,* up to 150 dB for small fishing vessels (Hildebrand, 2005), up to 186 dB for large vessels, 81 to 166 dB for empty tugs and barges and up to 170 dB for loaded tugs and barges (Richardson *et al.,* 1995) within the frequencies between 20 and 5000 Hz), or other factors (*e.g.,* wind and waves, traffic noise along adjacent roadways, aquatic animals, currents, etc.) as described above. No direct data on ambient noise levels within Tillamook Bay are available; however, in-water ambient noise levels are considered comparable to similar bays.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project may include impact pile driving, and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007).

Two types of hammers would be used on this project: impact and vibratory. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of the Corps' proposed activities on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, given there are no known pinniped haul-out sites in the vicinity of the proposed site of the MOF construction/deconstruction, visual and other non-acoustic stressors would be limited, and any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

*Acoustic Impacts*

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from the Corps' specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007, 2019). In general, exposure to pile driving noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts)

followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral). When analyzing the auditory effects of noise exposure, it is often helpful to broadly categorize sound as either impulsive or non-impulsive. When considering auditory effects, vibratory pile driving is considered a non-impulsive source while impact pile driving is treated as an impulsive source.

*Permanent Threshold Shift (PTS)*—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

*Temporary Threshold Shift (TTS)*—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with SELcum in an accelerating fashion: at low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Construction and deconstruction of the MOF, which is required to repair the Tillamook South Jetty, requires a combination of impact pile driving and vibratory pile driving. During this project, these activities will not occur at the same time and there will be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the project area and not remaining for extended periods of time, the potential for TTS declines.

*Behavioral Harassment*—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance

of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Disturbance may result in changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996, Bowers *et al.,* 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

*Stress responses*—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar construction projects.

*Auditory Masking*—Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the marine mammal (Southall *et al.,* 2007; Clark *et al.,* 2009; Hatch *et al.,* 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere

with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Marine mammals in Tillamook Bay are exposed to anthropogenic noise which may lead to some habituation, but is also a source of masking. Vocalization changes may result from a need to compete with an increase in background noise and include increasing the source level, modifying the frequency, increasing the call repetition rate of vocalizations, or ceasing to vocalize in the presence of increased noise (Hotchkin and Parks, 2013).

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources. Energy distribution of pile driving covers a broad frequency spectrum, and sound from pile driving would be within the audible range of pinnipeds and cetaceans present in the proposed action area. While some pile driving during the Corps' activities may mask some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that survival would be affected.

*Airborne Acoustic Effects*—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from these activities. Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. However, given that the closest known haul outs are approximately 1.5 km (0.9 mi) away for harbor seals and approximately 23 km (14 mi) or greater for California sea lions, Steller sea lions, and northern elephant seals, the likelihood of pinnipeds being exposed to airborne noise over the short duration of intermittent pile driving and removal is low.

We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

*Marine Mammal Habitat Effects*

The Corps' proposed activities would not result in permanent negative impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area. The Corps' proposed activities in Tillamook Bay could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. During impact pile driving and vibratory pile driving or removal, elevated levels of underwater noise would ensonify a portion of Tillamook Bay where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. The proposed construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

Pile installation/removal may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. In general, turbidity associated with pile installation is localized to about a 7.6 m

(25 ft) radius around the pile (Everitt *et al.,* 1980). Cetaceans and pinnipeds in Tillamook Bay are not expected to be close enough to the project pile driving areas to experience effects of turbidity; however, if they were they could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to minimal for marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

*Potential Pile Driving Effects on Prey*—Sound from pile driving may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality (summarized in Popper *et al.,* 2014). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4-6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving and removal activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe of the project.

In summary, given the short daily duration of sound associated with individual pile driving and the small area being affected relative to available nearby habitat, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species or other prey. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through these IHAs, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* pile driving and removal) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency cetaceans and/or phocids because predicted auditory injury zones are larger than for otariids. Auditory injury is unlikely to occur for otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

*Acoustic Thresholds*

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

The Corps' proposed activity includes the use of continuous (vibratory pile driving/removal) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa 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). The Corps' proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving/removal) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group | PTS Onset Thresholds * (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | *Cell 1:* $L_{p,0\text{-}pk,flat}$*:* 219 dB; $L_{E,p,\ LF,24h}$*:* 1183 dB | *Cell 2:* $L_{E,p,\ LF,24h}$*:* 199 dB. |
| Mid-Frequency (MF) Cetaceans | *Cell 3:* $L_{p,0\text{-}pk,flat}$*:* 230 dB; $L_{E,p,\ MF,24h}$*:* 1185 dB | *Cell 4:* $L_{E,p,\ MF,24h}$*:* 198 dB. |
| High-Frequency (HF) Cetaceans | *Cell 5:* $L_{p,0\text{-}pk,flat}$*:* 202 dB; $L_{E,p,HF,24h}$*:* 155 dB | *Cell 6:* $L_{E,p,\ HF,24h}$*:* 173 dB. |
| Phocid Pinnipeds (PW) (Underwater) | *Cell 7:* $L_{p,0\text{-}pk.flat}$*:* 218 dB; $L_{E,p,PW,24h}$*:* 1185 dB | *Cell 8:* $L_{E,p,PW,24h}$*:* 201 dB. |
| Otariid Pinnipeds (OW) (Underwater) | *Cell 9:* $L_{p,0\text{-}pk,flat}$*:* 232 dB; $L_{E,p,OW,24h}$*:* 203 dB | *Cell 10:* $L_{E,p,OW,24h}$*:* 219 dB. |

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

**Note:** Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1$\mu Pa^2s$. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving, and vibratory pile removal).

*Sound Source Levels of Proposed Activities*—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used empirical data from sound source verification (SSV) studies reported in Navy (2015) and CALTRANS (2020), to develop source levels for the various pile types, sizes and methods (Table 5). These proxies were chosen as they were obtained from SSV studies on piles of comparable types and sizes and/or in comparable environments (*e.g.,* they had comparable water depths). Note that these source levels represents the SPL referenced at a distance of 10 m from the source. It is conservatively assumed that the Corps will use steel instead of timber for the 24-inch pipe piles as the estimated proxy values for steel are louder than timber (*e.g.,* Greenbusch Group, 2018; 84 FR 61026, November 12, 2019). It is also conservatively assumed that vibratory removal will produce comparable levels of in-water noise as vibratory installation.

TABLE 5—ESTIMATES OF UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, AND VIBRATORY PILE REMOVAL

| Pile driving method | Pile description | Source level (dB peak) | Source level (dB RMS) | Source level (dB SEL) | Reference |
|---|---|---|---|---|---|
| Impact (attenuated [1]) | 24-inch steel pipe pile | 198 | 184 | 173 | CALTRANS (2020). |
| Vibratory (installation and removal; unattenuated). | 24-inch steel pipe pile | 177 | 161 | ..... | Navy (2015). |
| | 24-inch AZ steel sheets | ..... | 163 | 163 | CALTRANS (2020). |
| | 12-inch steel H-piles | 165 | 150 | 147 | CALTRANS (2020). |

[1] The estimated SPLs for 24-inch steel pipes assume a 5 dB reduction resulting from the use of a confined bubble curtain system.

*Level B Harassment Zones*—Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log10 (R1/R2)$,

Where:

B = transmission loss coefficient (assumed to be 15)

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Corps' proposed construction activities in the absence of specific modelling. All Level B harassment isopleths are reported in Table 7 considering RMS SSLs for impact and vibratory pile driving, respectively.

*Level A Harassment Zones*—The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as vibratory and impact pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported in Table 6.

TABLE 6—NMFS USER SPREADSHEET INPUTS

| | Impact pile driving installation | Vibratory pile driving | | | | | |
|---|---|---|---|---|---|---|---|
| | | Installation | | | Removal | | |
| | 24-inch steel pipe pile | 24-inch steel pipe pile | 24-inch AZ steel sheets | 12-inch steel H-piles | 24-inch steel pipe pile | 24-inch AZ steel sheets | 12-inch steel H-piles |
| Spreadsheet Tab Used. | E.1) Impact pile driving. | A.1) Non-Impul, Stat, Cont. | A.1) Non-Impul, Stat, Cont. | A.1) Non-Impul, Stat, Cont. | A.1) Non-Impul, Stat, Cont. | A.1) Non-Impul, Stat, Cont. | A.1) Non-Impul, Stat, Cont. |
| Source Level (SPL). | 173 dB SEL | 161 dB RMS | 163 dB RMS | 150 dB RMS | 161 dB RMS | 163 dB RMS | 150 dB RMS. |
| Transmission Loss Coefficient. | 15 | 15 | 15 | 15 | 15 | 15 | 15. |
| Weighting Factor Adjustment (kHz). | 2 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5. |
| Number of strikes per pile. | 533. | | | | | | |
| Time to install/remove single pile (minutes). | ..... | 15 | 10 | 10 | 5 | 3 | 3. |
| Piles per day | 4 | 8 | 25 | 10 | 12 | 50 | 10. |

TABLE 7—DISTANCES TO LEVEL A HARASSMENT, BY HEARING GROUP, AND LEVEL B HARASSMENT THRESHOLDS PER PILE TYPE AND PILE DRIVING METHOD

| Activity | Pile description | Piles per day | Level A harassment distance (m) | | | Level A harassment areas ($km^2$) for all hearing groups | Level B harassment distance (m) all hearing groups [1] | Level B harassment areas ($km^2$) for all hearing groups [1] |
|---|---|---|---|---|---|---|---|---|
| | | | HF | PW | OW | | | |
| Impact Installation (attenuated) [2] | 24-inch steel pipe pile | 4 | 424.5 | 190.7 | 13.8 | <0.5 | 399 | 0.39 |

TABLE 7—DISTANCES TO LEVEL A HARASSMENT, BY HEARING GROUP, AND LEVEL B HARASSMENT THRESHOLDS PER PILE TYPE AND PILE DRIVING METHOD—Continued

| Activity | Pile description | Piles per day | Level A harassment distance (m) | | | Level A harassment areas ($km^2$) for all hearing groups | Level B harassment distance (m) all hearing groups [1] | Level B harassment areas ($km^2$) for all hearing groups [1] |
|---|---|---|---|---|---|---|---|---|
| | | | HF | PW | OW | | | |
| Vibratory Installation | 24-inch steel pipe pile | 8 | 16.0 | 6.6 | 0.5 | <0.1 | 5,412 | 20.14 |
| | 24-inch AZ steel sheets | 14 | 35.5 | 14.6 | 1.0 | <0.1 | 7,357 | 27.01 |
| | 12-inch steel H-piles | 10 | 2.6 | 1.1 | 0.1 | <0.1 | 1,000 | 1.84 |
| Vibratory Removal | 24-inch steel pipe pile | 12 | 10.1 | 4.2 | 0.3 | <0.1 | 5,412 | 20.14 |
| | 24-inch AZ steel sheets | 50 | 25.3 | 10.4 | 0.7 | <0.1 | 7,357 | 27.01 |
| | 12-inch steel H-piles | 10 | 1.2 | 0.5 | 0.0 | <0.1 | 1,000 | 1.84 |

[1] Harassment areas have been truncated where appropriate to account for land masses.
[2] Distances to Level A harassment, by hearing group, for impact pile driving were calculated based on SEL source levels as they resulted in larger, thus more conservative, isopleths for calculating PTS onset than Peak source levels.

*Marine Mammal Occurrence and Take Estimation*

In this section we provide information about the occurrence of marine mammals, including density or other relevant information, that will inform the take calculations. We also describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

In most cases, recent marine mammal counts, density estimates, or abundance estimates were not available for Tillamook Bay. Thus, information regarding marine mammal occurrence from proximal data obtained from nearshore sightings and haul-out sites (*e.g.,* Three Arch Rock) is used to approximate local abundance in Tillamook Bay. When proximal count estimates were available (*i.e.,* for harbor seals, Steller sea lions, and California sea lions), the Corps derived density estimates with an assumption that surveys accounted for animals present in the entirety of Tillamook Bay, an area roughly 37 $km^2$ (Oregon Coastal Atlas, 2022). The Corps multiplied marine mammal densities by isopleth areas to estimate potential take associated with pile driving. Given that marine mammal densities are likely not uniform in Tillamook Bay, NMFS instead estimates potential take associated with pile driving for these and the other marine mammal species assuming maximum daily occurrence rates (based on the abovementioned nearby proximal count estimates) multiplied by the total number of action days estimated per activity. There may be 20 (vibratory pile driving only) to 23 (vibratory and impact pile driving) total days of noise exposure from pile driving during the Corps' proposed activities in Year 1 and 13 (vibratory removal only) total days of noise exposure from pile driving during the Corps' proposed activities in Year 2. Takes for Year one for all species except harbor porpoises (see below) are estimated assuming that both vibratory and impact pile driving will be necessary and thus the maximum number of days of action days are required (*i.e.,* 23 days). Takes for Year two assume that 13 total action days are required. A summary of take proposed for authorization is available in Tables 8 and 9.

*Harbor Porpoises*

There were multiple occurrences of 1–2 harbor porpoises detected in the coastal waters just north of the Tillamook Bay entrance during June and July of 1990 (Halpin *et al.,* 2009; Ford *et al.,* 2013). More recently, aerial surveys have detected single animals near the Tillamook Bay entrance in October 2011 and September 2012 (Adams *et al.,* 2014). Although there were no recorded harbor porpoise observations within Tillamook Bay itself, the species is somewhat cryptic and there is potentially low detection during aerial surveys. Thus, NMFS estimates the daily harbor porpoise abundance within Tillamook Bay to be 1 individual.

During Year 1, if impact pile driving is necessary for driving steel piles, the Level A harassment distance for this activity for harbor porpoises is larger than the Level B harassment distance (Table 7) and the proposed shutdown zone (see the Proposed Mitigation section). Therefore, the Corps proposed that all harbor porpoises in Tillamook Bay on days when impact pile driving occurs would be taken by Level A harassment. NMFS concurs with this estimate and proposes to authorize 9 instances of take by Level A harassment for harbor porpoises in Year 1 during construction of the MOF (1 harbor porpoise per day × 9 days of impact pile driving = 9 takes by Level A harassment).

During Year 1, if vibratory and impact pile driving is required, the Corps estimated that there could be 14 takes of harbor porpoises by Level B harassment (1 harbor porpoise per day × 12 days vibratory installing steel sheets = 12 takes by Level B harassment, and 1 harbor porpoise per day × 2 days vibratory installing H piles = 2 takes by Level B harassment, for a total of 14 takes by Level B harassment; Table 1). If only vibratory pile driving is required, the Corps estimated that 20 harbor porpoises may be taken by Level B harassment (1 harbor porpoise per day × 20 total action days; Table 1). Therefore, to be conservative, NMFS proposes to authorize 20 instances of take by Level B harassment for harbor porpoises (the maximum estimate of animals that may be taken by Level B harassment based on the two likely scenarios) in Year 1 during construction of the MOF.

During Year 2, the Corps requested and NMFS proposes to authorize 13 instances of take by Level B harassment for harbor porpoises during vibratory removal of the MOF (1 harbor porpoise per day × 13 total action days; Table 1). No Level A harassment is anticipated to occur or proposed to be authorized. Considering the small Level A harassment zones (Table 7) in comparison to the required shutdown zones (see the Proposed Mitigation section) it is unlikely that a harbor porpoise will enter and remain within the area between the Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment.

*California Sea Lions*

The estimate for daily California sea lion abundance (n = 11) is based on coastal surveys conducted between 2002 and 2005 (Scordino, 2006). While pile driving will occur in winter or summer, the maximum number of animals detected during any month (*i.e.,* 11 sea lions in April) at the Three Arch Rock haul out site, located approximately 23

km (14 mi) from the proposed site of the MOF, was used to estimate daily occurrence by the Corps. Given the distance of this haul out site from the proposed activities, the fact that pile driving is not expected to occur in April due to timing constrictions, and the low likelihood that all animals present at the Three Arch Rock would leave and enter Tillamook Bay on a single day; the Corps' estimated that approximately half of the individuals present at Three Arch Rock (6 California sea lions) could potentially enter Tillamook Bay during pile driving and be subject to acoustic harassment. NMFS concurs and estimates, based on the best available science, the daily California sea lion abundance within Tillamook Bay to be 6 individuals.

During Year 1, NMFS proposes to authorize 138 instances of take by Level B harassment for California sea lions during the construction of the MOF (6 California sea lions per day × 23 total action days required for impact and vibratory pile driving; Table 1). During Year 2, NMFS proposes to authorize 78 instances of take by Level B harassment for California sea lions during vibratory removal of the MOF (6 California sea lions per day × 13 total action days; Table 1). Under either scenario, Level A harassment is not anticipated or proposed to be authorized for Year 1 or Year 2. Considering the small Level A harassment zones (Table 1) in comparison to the required shutdown zones (see the Proposed Mitigation section) it is unlikely that a California sea lion will enter and remain within the area between the Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment.

*Steller Sea Lions*

The Corps and NMFS are unaware of any recent data regarding Steller sea lion abundance near Tillamook Bay. Therefore, seasonal Steller sea lion abundance was estimated based on the maximum number of animals detected (n = 38 for between November and February, and n = 58 between July and August) at the Three Arch Rock haul out site during coastal surveys between 2002 and 2005 (Scordino, 2006). Given that this haul out site is roughly 23 km (14 mi) away from the proposed MOF, the Corps conservatively estimated that half of the individuals present at Three Arch Rock (19 Steller sea lions between November and February, and 29 Steller sea lions between July and August) could potentially disperse throughout Tillamook Bay during pile driving and be subject to harassment from the proposed activities. For the purposes of our take estimation, NMFS conservatively assumes that the daily Steller sea lion abundance in Tillamook Bay is equivalent to the largest seasonal abundance that the Corps estimated would be present (*i.e.,* we assume that 29 individual Steller sea lions would be present each day in Tillamook Bay).

During Year 1, NMFS proposes to authorize 667 instances of take by Level B harassment for Steller sea lions during the construction of the MOF (29 Steller sea lions per day × 23 total action days required for impact and vibratory pile driving; Table 1). During Year 2, NMFS proposes to authorize 377 instances of take by Level B harassment for Steller sea lions during vibratory removal of the MOF (6 Steller sea lions per day × 13 total action days; Table 1). Under either scenario, Level A harassment is not anticipated or proposed to be authorized for Year 1 or Year 2. The Level A harassment zones (Table 1) are smaller than the required shutdown zones (see the Proposed Mitigation section), therefore it is unlikely that a Steller sea lion will enter and remain within the area between the Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment.

*Harbor Seals*

The latest (May 2014) pinniped aerial surveys conducted by the Oregon Department of Fish and Wildlife (ODFW, 2022) estimated 220 harbor seals (pups and non-pups combined) within Tillamook Bay (B.E. Wright, personal communication, February 12, 2021). After applying the Huber *et al.* (2001) correction factor of 1.53, used to account for likely imperfect detection during surveys, the adjusted number of harbor seals that may have been present Tillamook Bay during the 2014 surveys is approximately 337 individuals. However, that estimate likely overestimates the number of harbor seals present in the non-pupping season. Therefore, the Corps used calculations from monthly surveys of Tillamook Bay haul out sites between 1978 and 1981 carried out by Brown and Mate (1983) to estimate the average proportion of animals present during the Nov—Feb and Jul—Aug proposed construction windows (relative to counts observed in May). Accounting for these proportions (0.67 and 1.2, respectively), the Corps estimated that the 337 harbor seals likely present in May 2014 would have equated to an average abundance of 226 harbor seals between November and February and 404 harbor seals between July and August. For the purposes of our take estimation, NMFS conservatively assumes that the daily harbor seal abundance in Tillamook Bay is equivalent to the largest seasonal abundance that the Corps estimated would be present (*i.e.,* we assume that 404 individual harbor seals would be present each day in Tillamook Bay).

During Year 1, NMFS estimates that 9,292 total instances of take for harbor seals would occur during the construction of the MOF (404 harbor seals per day × 23 total action days required for impact and vibratory pile driving; Table 1). NMFS estimates that 3,636 of these instances of take would be attributed to impact pile driving (404 harbor seals per day × 9 days impact pile driving) and the remaining 5,656 instances of take would be attributed to vibratory pile driving (404 harbor seals per day × 14 days vibratory pile driving). During impact pile driving, while a 100 m shutdown zone would be implemented for harbor seals (see Table 10 in the Proposed Mitigation section), an area of approximately 0.07 $km^2$ would still be ensonified above the Level A harassment threshold for phocids (Table 7). Given this remaining Level A harassment area for phocids is 17.95 percent of the Level B harassment area (0.39 $km^2$), NMFS proposes to authorize 653 (17.95 percent) of the total instances of take attributed to impact pile driving (*i.e.,* 17.95 percent of 3,636 instances of take), as instances of take by Level A harassment. NMFS proposes to authorize the remaining 8,639 instances of take by Level B harassment.

During Year 2, NMFS proposes to authorize 5,252 instances of take by Level B harassment for harbor seals during vibratory removal of the MOF (404 harbor seals per day × 13 total action days; Table 1). No take by Level A harassment is anticipated to occur or proposed to be authorized. The Level A harassment zones (Table 1) are smaller than the required shutdown zones (see the Proposed Mitigation section), therefore it is unlikely that a harbor seal will enter and remain within the area between the Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment during MOF deconstruction.

*Northern Elephant Seal*

There were no recorded sightings of elephant seals within 16 km (10 mi) of Tillamook Bay within the OBIS–SEAMAP database (Halpin *et al.,* 2009; OBIS–SEAMAP, 2022) nor were any animals detected at the closest haul out site (*i.e.,* Three Arch Rock) during pinniped surveys between 2002 and 2005 (Scordino, 2006). In fact, the closest haul out site with Northern elephant seal observations during

surveys was Cape Arago (Scordino 2006), roughly 6 km (4 mi) south of Coos Bay and 256 km (159 mi) south of Tillamook Bay. Given the low likelihood of occurrence within the project vicinity and the lack of reported sightings within the bay (Halpin *et al.,* 2009; OBIS–SEAMAP, 2022), the Corps conservatively estimated, and NMFS assumes, elephant seal abundance within Tillamook Bay at 1 individual every other day.

During Year 1, the Corps estimated that 12 northern elephant seals may be taken during the construction of the MOF (1 elephant seal every other day × 23 total action days; Table 1). If impact pile driving is necessary for driving steel piles, the Corps estimated that the total take during the 9 days of impact pile driving would be 5 individuals (1 elephant seal every other day × 9 total action days; Table 1). While a 100 m shutdown zone would be implemented for northern elephant seals during impact pile driving (see Table 10 in the Proposed Mitigation section), an area of approximately 0.07 $km^2$ would still be ensonified above the Level A harassment threshold for phocids during this activity (Table 7). Given this remaining Level A harassment area for phocids (0.07 $km^2$) is 17.95 percent of the Level B harassment area (0.39 $km^2$), NMFS proposes to authorize 17.95 percent, or 1, instance of take by Level A harassment for northern elephant seals during impact pile driving (17.95 percent of the 12 total instances of take). We propose that the remaining 11 instances of take be by Level B harassment.

During Year 2, the Corps requested and we propose 7 instances of Level B harassment take for northern elephant seals during vibratory removal of the MOF (1 elephant seal every other day × 13 total action days; Table 1). Level A harassment is not anticipated or proposed to be authorized. The Level A harassment zones (Table 1) are smaller than the required shutdown zones (see the Proposed Mitigation section), therefore it is unlikely that a northern elephant seal will enter and remain within the area between the Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment during deconstruction of the MOF.

TABLE 8—PROPOSED AUTHORIZED AMOUNT OF TAKING IN YEAR 1

| Species | Stock | Level A | Level B | Total | Percent of stock |
|---|---|---|---|---|---|
| Harbor porpoise | Northern OR/WA Coast | 9 | 20 | 29 | 0.14 |
| California sea lion | U.S. | 0 | 138 | 138 | 0.05 |
| Steller sea lion | Eastern | 0 | 667 | 667 | 1.54 |
| Harbor seal | OR/CA Coastal | 653 | 8,639 | 9,292 | 37.57 |
| Northern elephant seal | California Breeding | 1 | 11 | 12 | 0.01 |

TABLE 9—PROPOSED AUTHORIZED AMOUNT OF TAKING IN YEAR 2

| Species | Stock | Level A | Level B | Total | Percent of stock |
|---|---|---|---|---|---|
| Harbor porpoise | Northern OR/WA Coast | 0 | 13 | 13 | 0.06 |
| California sea lion | U.S. | 0 | 78 | 78 | 0.03 |
| Steller sea lion | Eastern | 0 | 337 | 337 | 0.78 |
| Harbor seal | OR/CA Coastal | 0 | 5,252 | 5,252 | 21.24 |
| Northern elephant seal | California Breeding | 0 | 7 | 7 | <0.01 |

**Proposed Mitigation**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The Corps must employ the following standard mitigation measures, as included in their application and the proposed IHAs:

- The Corps must conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, and operational procedures are clearly understood;
- For in-water work other than pile driving/removal (*e.g.,* stone placement, use of barge-mounted excavators, or dredging), if a marine mammal comes within 10 m (33 ft), operations shall cease. Should a marine mammal come within 10 m (33ft) of a vessel in transit, the boat operator would reduce vessel speed to the minimum level required to maintain steerage and safe working conditions. If human safety is at risk,

the in-water activity will be allowed to continue until it is safe to stop;

• In-water work activities may only occur when PSOs can effectively visually monitor for the presence of marine mammals, and when the entire shutdown zone and adjacent waters are visible (*e.g.,* including during daylight hours and when monitoring effectiveness is not reduced due to rain, fog, snow, etc.).

• For all pile driving/removal activities, the Corps must establish a minimum 15 m (49 ft) shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the type of driving/removal activity type and by marine mammal hearing group (see Table 10). Here, shutdown zones are larger than the calculated Level A harassment isopleth shown in Table 7, except for harbor porpoises, harbor seals, and northern elephant seals during impact driving of 24-inch steel piles when a 100-m shutdown zone will be visually monitored;

TABLE 10—SHUTDOWN ZONES DURING PROJECT ACTIVITIES

| Activity | Pile description | Distance (m) | | |
|---|---|---|---|---|
| | | HF | PW | OW |
| Impact Installation (attenuated) | 24-inch steel pipe pile | 100 | 100 | 15 |
| Vibratory Installation | 24-inch steel pipe pile | 50 | 15 | 15 |
| | 24-inch AZ steel sheets | 50 | 15 | 15 |
| | 12-inch steel H-piles | 15 | 15 | 15 |
| Vibratory Removal | 24-inch steel pipe pile | 15 | 15 | 15 |
| | 24-inch AZ steel sheets | 50 | 15 | 15 |
| | 12-inch steel H-piles | 15 | 15 | 15 |

• The Corps must delay or shutdown all pile driving activities should an animal approach or enter the appropriate shutdown zone. The Corps may resume activities after one of the following conditions have been met: (1) the animal is observed exiting the shutdown zone; (2) the animal is thought to have exited the shutdown zone based on a determination of its course, speed, and movement relative to the pile driving location; or (3) the shutdown zone has been clear from any additional sightings for 15 minutes;

• The Corps will employ PSOs trained in marine mammal identification and behaviors to monitor marine mammal presence in the action area, and must establish the following monitoring locations: during vibratory driving, at least one PSO must be stationed on the shoreline near the Port of Garibaldi to monitor as much of the Level B harassment zone as possible, and another PSO must be stationed on the shoreline adjacent to the proposed MOF site to monitor the shutdown zone; during impact pile driving, two PSOs must be stationed on the shoreline adjacent to the proposed MOF site to monitor the shutdown zone. The Corps must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal at least two PSOs must be used;

• The placement of the PSOs during all pile driving and removal activities will ensure that the entire Level A harassment and shutdown zones are visible during pile installation and removal;

• Monitoring must take place from 30 minutes prior to initiation of pile driving (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving;

• If in-water work ceases for more than 30 minutes, the Corps will conduct pre-clearance monitoring of both the Level B harassment zone and shutdown zone;

• Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 10 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;

• Marine mammals observed anywhere within visual range of the PSO will be tracked relative to construction activities. If a marine mammal is observed entering or within the shutdown zones indicated in Table 10, pile driving must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (Table 10), or 15 minutes have passed without re-detection of the animal;

• Vibratory hammers are the preferred method for installing piles at the MOF. If impact hammers are required to install steel piles, a confined bubble curtain must be used to minimize noise levels. The bubble curtain must adhere by the following restrictions:

○ The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column;

○ The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact; and

○ Air flow to the bubblers must be balanced around the circumference of the pile;

• The Corps must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft starts will not be used for vibratory pile installation and removal. PSOs shall begin observing for marine mammals 30 minutes before ''soft start'' or in-water pile installation or removal begins;

• Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized

number of takes has been met, entering or within the harassment zone;

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

*Visual Monitoring*

Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following:

- PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued IHA. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued IHA. PSOs must be approved by NMFS prior to beginning any activity subject to these IHAs; and
- PSOs would be placed at two vantage points as aforementioned in the Proposed Mitigation section (see Figure 1–3 of the Corps' IHA Application) to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator;
- PSOs would use a hand-held GPS device or rangefinder to verify the required monitoring distance from the project site;
- PSOs would scan the waters within the Level A harassment and Level B harassment zones using binoculars (10x42 or similar) or spotting scopes (20–60 zoom or equivalent) and make visual observations of marine mammals present; and
- PSOs must record all observations of marine mammals, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;

Additionally, the Corps will have PSOs conduct one pinniped monitoring count a week prior to construction and report the number of marine mammals present within 500 m (1640 ft) of the Tillamook South Jetty or MOF. Upon completion of jetty repairs, PSOs would conduct two post-construction monitoring events, with one approximately 4 weeks after construction, and another at 8 weeks post construction. These post-construction marine mammal surveys would help to determine whether marine mammal detections post-construction were comparable to surveys conducted prior to construction.

*Reporting*

Draft marine mammal monitoring reports would be submitted to NMFS within 90 days after the completion of pile driving (Year 1 IHA) and removal activities (Year 2 IHA), or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The reports would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the reports must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact or vibratory) and the total equipment duration for vibratory installation and removal for each pile or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification

of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, etc.); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones and shutdown zones, by species;
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any;
- Description of other human activity within each monitoring period;
- Description of any deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Brief description of any impediments to obtaining reliable observations during construction period; and
- Description of any impediments to complying with these mitigation measures.

If no comments are received from NMFS within 30 days, the draft final reports would constitute the final reports. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

*Reporting Injured or Dead Marine Mammals*

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.Monitoring Reports@noaa.gov*), NMFS and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Corps must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The Corps must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 2, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile driving activities associated with the Corps' proposed construction activities, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance), and for some species, Level A harassment incidental to underwater sounds generated from pile driving. Potential takes could occur if individuals are present in zones ensonified above the thresholds for Level B harassment and Level A harassment, identified above, while activities are underway.

NMFS does not anticipate that serious injury or mortality would occur as a result of the Corps' planned activity given the nature of the activity, even in the absence of required mitigation. For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. Required mitigation is expected to minimize the duration and intensity of the authorized taking by Level A and Level B harassment. Further, the amount of take proposed to be authorized is extremely small for 4 of the 5 species when compared to stock abundance.

The primary method of installation will be vibratory pile driving. Vibratory pile driving produces lower SPLs than impact pile driving. The rise time of the sound produced by vibratory pile driving is slower, reducing the probability and severity of injury. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact pile driving is used, implementation of soft start measures, a bubble curtain, and shutdown zones will significantly reduce any possibility of injury. Given sufficient notice through use of soft starts (for impact driving), marine mammals are expected to move away from a sound source prior to it becoming potentially injurious. The Corps will use two PSOs stationed strategically to increase detectability of marine mammals during pile installation and removal, enabling a high rate of success in implementation of shutdowns to avoid injury for most

species. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

Behavioral responses of marine mammals to pile driving and removal in Tillamook Bay are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns or increased haul out time (Thorson and Reyff, 2006). Given that pile driving and removal would occur intermittently for only a short duration (20–23 days in Year 1 and 13 days in Year 2), often on nonconsecutive days, any harassment occurring would be temporary. Additionally, many of the species present in the region would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporarily present species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving, which will only be used if necessary. The pile driving activities analyzed here are similar to, or less impactful than, other construction activities conducted in Oregon, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

The Corps' proposed activities are limited in scope spatially. While precise impacts would not be known until the MOF has been designed, based on an MOF built for a similar project (The Coos Bay North Jetty Maintenance project, *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-army-corps-engineers-north-jetty-maintenance-and-repairs*), it is estimated that temporary impacts below the high tide line (HTL) would be limited to 0.14 acres or less. The full extent of the MOF and associated access dredging would be approximately 3.6 acres, with an additional 3.7 acres of upland disturbance associated with the MOF staging area. For all species, there are no known habitat areas of particular importance (*e.g.,* Biologically Important Areas (BIAs), critical habitat, primary foraging or calving habitat) in the project area that would be impacted by the Corps' proposed activities. While takes may occur during important feeding or breeding times, the project area represents a small portion of available foraging and breeding habitat and impacts on marine mammal feeding and breeding for all species should be minimal. In general, cetaceans and pinnipeds are infrequent visitors near the site of the proposed construction activities due to shallow waters in this region further reducing the likelihood that cetaceans and pinnipeds will approach and be present within the ensonified areas. Further, none of the harassment isopleths block the entrance out of Tillamook Bay (see Figures 6–1 and 6–2 in the Corps' application), thus marine mammals could leave the bay and engage in foraging, social behavior or other activities without being subject to Level A or Level B harassment.

The impact of harassment on harbor seals is difficult to assess given the most recent abundance estimate available for this stock is from 1999 (Table 2). We are aware that there is one haul-out site located approximately 1.5 km (0.9 mi) east of the proposed construction site on an intertidal sand flat in the middle of the bay (see Figure 4–1 in the Corps' application) that has been historically noted in Tillamook Bay. Given the Level B harassment distances for vibratory installation and removal of 24-inch steel pipe piles and 24-inch AZ steel sheets are larger than 1.5 km (0.9 mi) (see Table 7), we can presume that some harbor seals will be repeatedly taken. In addition, while no there are no known pinniped haul outs on Bayocean split, harbor seals and other pinnipeds may be resting or hauled out on land near the site of the MOF construction, jetty rocks, or nearby beaches. Repeated, sequential exposure to pile driving noise over a long duration could result in more severe impacts to individuals that could affect a population; however, the limited number of non-consecutive pile driving days for this project means that these types of impacts are not anticipated.

The project also is not expected to have significant adverse effects on affected marine mammal habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. Any impacts on marine mammal prey that would occur during the Corps' planned activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammal foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and would, therefore, not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;

- The number of total takes (by Level A and Level B harassment) are less than 2 percent of the best available abundance estimates for all but one stock;
- The Corps would implement mitigation measures including soft-starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS;
- Take would not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within BIAs, or other habitats critical to recruitment or survival (*e.g.,* rookery);
- Take would occur over a short timeframe (*i.e.,* intermittently over up to 23 and 13 non-consecutive days in Year 1 and Year 2, respectively). This short timeframe minimizes the probability of multiple exposures on individuals, and any repeated exposures that do occur are not expected to occur on sequential days, decreasing the likelihood of physiological impacts caused by chronic stress or sustained energetic impacts that might affect survival or reproductive success;
- Any impacts to marine mammal habitat from pile driving (including to prey sources as well as acoustic habitat, *e.g.,* from masking) are expected to be temporary and minimal; and
- Take would only occur within a small portion of Tillamook Bay—a limited, confined area of any given stock's home range.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds, specific to both the Year 1 and Year 2 proposed IHAs, that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance for all but one species (in fact, take of individuals is less than 2 percent of the abundance of the 4 of the 5 affected stocks, see Tables 8 and 9). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

There is no current estimate of abundance available for this harbor seals (Carretta *et al.,* 2021). In 1999, aerial surveys of harbor seals in Oregon and Washington were conducted by the National Marine Mammal Laboratory (NMLL) and the Oregon and Washington Departments of Fish and Wildlife (ODFW and WDFD) during the pupping season. After applying a correction factor to account for seals missed during aerial surveys (Huber *et al.,* 2001), they estimated that the population size of the Oregon/Washington Coast Stock of harbor seals was 24,732 (CV = 0.12) in 1999. Historical and current trends of harbor seal abundance in Oregon and Washington are unknown. Based on the analyses of Jeffries *et al.* (2003) and Brown *et al.* (2005), both the Washington and Oregon portions of this stock were reported as reaching carrying capacity. While the proposed authorized take for harbor seals is 37.57 percent of the 1999 abundance estimate in Year 1 and 21.24 percent of this abundance in Year 2, harbor seals are not known to make extensive migrations and are known to display strong fidelity to haul out sites (Pitcher and Calkins, 1979; Pitcher and McAllister, 1981). Therefore, we presume that some of the harbor seals present in the action area will be repeatedly taken and actual number of individuals exposed to Level A and Level B harassment will be much lower. Further, we calculated proposed take estimates of harbor seals assuming the maximum seasonal abundance of individuals were present in Tillamook Bay during each action day; however, work may occur during other times of the year when harbor seal abundance is estimated to be lower, and thus the actual number of individuals exposed to Level A and Level B harassment would be lower. Lastly, take would occur in a small portion of Tillamook Bay and it is unlikely that a third of the stock would be in these waters during the short duration of the proposed activities.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds, specific to both the Year 1 and Year 2 proposed IHAs, that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from these activities. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue two IHAs to the Corps incidental to conducting repairs of the Tillamook South Jetty in Tillamook Bay, Oregon from November 1, 2022 to October 31, 2023 (Year 1 IHA) and from November 1, 2024 to October 31, 2025 (Year 2 IHA), provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

**Request for Public Comments**

We request comment on our analyses, the proposed authorizations, and any other aspect of this notice of proposed IHAs for the proposed construction activities. We also request comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 21, 2022.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2022–13605 Filed 6–24–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Notice of Intent To Grant Partially Exclusive Patent License

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a partially exclusive patent license to Smart Response Technologies, Inc., a C Corporation, having a place of business at 726 East Main Street, Suite F117, Lebanon, Ohio 45036.

**DATES:** Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this notice.

**ADDRESSES:** Submit written objections to Mr. John Schutte, 711th Human Performance Wing, 2510 Fifth Street, 840, Wright-Patterson AFB, OH 45433; or Email: *john.schutte.3@us.af.mil.* Include Docket No. ARH–220505C–PLA in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Schutte, 711th Human Performance Wing, 2510 Fifth Street, 840, Wright-Patterson AFB, OH 45433; Telephone: 937–938–3038 or Email: *john.schutte.3@us.af.mil.*

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

**Abstract of Patent Application(s)**

A multi-modal communications system integrates multiple different communications channels and modalities into a single user interface that enables operators to monitor and respond to multiple audio and text communications.

**Intellectual Property**

U.S. Patent No. 9,230,549, issued January 5, 2016, and entitled Multi-Modal Communications. The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

**Adriane Paris,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 2022–13576 Filed 6–24–22; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Defense (DoD).

**ACTION:** Rescindment of multiple system of records notices.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Defense (DoD) is providing notification of the rescindment of 52 Privacy Act system of records notices (SORNs). A description of these systems can be found in the table below. Additionally, the DoD is issuing a Direct Final Rule, published elsewhere in today's issue of the **Federal Register**, to amend its regulation and remove the Privacy Act exemption rules for five SORNs *[items jj) through nn), below]* rescinded in this notice.

**DATES:** The rescindment of these SORNs are effective June 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rahwa Keleta, Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700, *OSD.DPCLTD@mail.mil,* (703) 571–0070.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and

management efforts, the DoD is removing 52 Privacy Act systems of records notices from its inventory. Upon review of its inventory, DoD determined it no longer needs or uses these system of records and is retiring them as follows:

Thirty-five SORNs [items a) through z), and aa) through ii)] listed in the table below are being rescinded because the records are now maintained as part of the DoD-wide system of records titled DoD–0005, Defense Training Records, published December 28, 2020; 85 FR 84316.

Six SORNs [items jj) through oo)] are rescinded because the records are now maintained as part of the system of records titled DUSDI 02-DoD, Personnel Vetting Records System, published October 17, 2018, 83 FR 52420.

Four SORNs [items pp) through ss] are being rescinded because the records are now part of the DoD-wide system of records titled DoD–0007, Reasonable Accommodation and Assistive Technology Records, published July 22, 2021, 86 FR 38692.

Three SORNs [items tt) through vv] are being rescinded because the records are now covered under the DoD-wide system of records titled DoD–0003 Mobilization Deployment Management Information System (MDMIS) published July 8, 2020; 85 FR 41007.

The following individual SORNs [items ww) through zz)] are being rescinded for the reasons stated in each paragraph below.

The Department of the Navy system of records N03501–3, Readiness and Cost Reporting Program (RCRP) Records (July 22, 2010, 75 FR 42719), is being rescinded because these records are now maintained as part of the DoD-wide system of records titled DoD 0004, Defense Repository for Common Enterprise Data (DRCED), which covers records maintained to support the DoD's defense business enterprise by using technology for readiness reporting and to synchronize and normalize data to improve affordability, performance, reporting, and mission readiness.

The DCAA system of records RDCAA 240.5, Standards of Conduct, Conflict of Interest (January 3, 2011, 76 FR 114), is being rescinded because these records are now maintained as a part of the government-wide system of records titled OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records, which covers records collected and maintained in accordance with the requirements of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989, as amended, and Executive Order 12674, as modified, and the Office of Government Ethics (OGE) and agency regulations thereunder.

The DCAA system of records RDCAA 240.3, Legal Opinions (February 5, 2015, 80 FR 6501; January 3, 2011, 76 FR 115), is being rescinded because these records are now maintained as a part of the government-wide system of records titled OPM/GOVT–1, General Personnel Records, which covers general personnel records of current and former Federal employees as defined in 5 U.S.C. 2105, or OPM/GOVT–3, Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions and Termination of Probationers, which covers records that result from the proposal, processing and documentation of these actions taken either by the OPM or by agencies against employees in accordance with OPM regulations.

The OSD system of records DMDC 08, Survey and Census Data Base (October 2, 2007, 72 FR 56062), is being rescinded because these records are now maintained as a part of the DHRA 03, Survey Data and Assessment system of records, which covers data about individuals who completed DoD-sponsored survey questionnaires or who have participated in DoD-sponsored focus groups for the purpose of assessing characteristics, attitudes, opinions, and experiences of DoD personnel, households, and others, and to support manpower research.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Privacy, Civil Liberties, and FOIA Directorate website at *https://dpcld.defense.gov*.

## II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this SORN bulk rescindment to OMB and Congress.

Dated: June 21, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

| System name | No. | Descriptions | History |
|---|---|---|---|
| (a) Information Officer Short Course Eligibility File. | F035 SAFPA D | was established to determine eligibility of Public Affairs Officers to attend future Air Force Short Courses in Communication. | June 11, 1997, 62 FR 31793; February 22, 1993, 58 FR 10403. |
| (b) Mobilization Augmentee Training Folders. | F035 SAFPA B | was established to serve as a training record for participation and assignment with the Reserve Components and used by supervisory personnel to determine eligibility for promotion or reassignment. | June 11, 1997, 62 FR 31793; February 22, 1993, 58 FR 10370. |
| (c) Basic Training Management System. | F036 AETC Z | was established to evaluate and record performance/progress of the students and to determine and generate statistics to measure the health and effectiveness of the Basic Military Training Program. | November 12, 2008, 73 FR 66877. |
| (d) Education and Training Management System. | F036 AFMC D | was established to collect education and training information that supported the needs of the education and training communities located at Headquarters Air Force Materiel Command and subordinate units. | April 07, 2016, 81 FR 20369. |
| (e) Air Force Inactive Duty Training Records. | F036 AFRC A | was established to manage Inactive Duty Training (IDT) periods such as Unit Training Assembly, Readiness Management Period, Points Only, and Funeral Honor Duty and provided Air Force Reserve Commanders on-site IDT participation information. | January 23, 2009; 74 FR 4144. |
| (f) Reserve Judge Advocate Training Report. | F051 AFRES A | was established to provide Air Force Reserve Staff Judge Advocate Training Files on all Reserve attorneys in the JAG Corps. | June 11, 1997, 62 FR 31793; February 22, 1993, 58 FR 10427. |
| (g) Flying Training Records | F036 AETC S | was established to determine flying training potential, document, and record performance, and manage training. | July 2, 2009, 74 FR 31718. |

| System name | No. | Descriptions | History |
|---|---|---|---|
| (h) Graduate Training Integration Management System. | F036 AF AETC B | was established to manage all aspects of Air Force graduate flight training. | June 30, 2009, 74 FR 31261. |
| (i) Officer Training School Flight Training Information System. | F036 AETC K | was established to monitor the progress of an individual toward completion of the Officer Training School Flight Training program. | July 26, 2004; 69 FR 44515. |
| (j) Space Command Operations Training. | F036 AFSPC A | was established to maintain personnel qualifications, capabilities and historical data for analysis by unit and operations support squadrons to determine individual overall job qualifications. | March 26, 2010; 75 FR 14580. |
| (k) Training Integration Management System (TIMS). | F036 AETC Y | was established to maintain personnel qualifications, capabilities and historical data for analysis by unit and operations support squadrons to determine individual overall job qualifications. | November 12, 2008; 73 FR 66873. |
| (l) Training Scheduling System Records. | F036 AFMC G | was established for scheduling training, maintaining work assignments according to employee certifications, and matching employees with the correct training records. | December 30, 2008; 73 FR 63143. |
| (m) United States Air Force (USAF) Airman Retraining Program. | F036 AFPC Y | was established to evaluate decisions on retraining applications. | December 31, 2012; 77 FR 77049; June 11, 1997, 62 FR 31793; February 23, 1993, 58 FR 10326. |
| (n) Air Education Training Command Financial Management Records. | F065 AETC A | was established to support the Air Education and Training Command's Temporary Duty-To-School Management Information System and the Budget Analysis Tools System. | December 30, 2008; 73 FR 79845. |
| (o) Air Force Aerospace Physiology Training Program. | F044 AF SG H | was established to authenticate training, location and trainee academic grades for courses related to Aerospace Physiology Training Programs. | May 20, 2003; 68 FR 27540. |
| (p) Long-Term Civilian Training Student Control Files. | A0621–1 DASG | was established for the initiation and maintenance of contracts between the Army and civilian academic institutions for the purpose of sending Army Medical Department officers for long-term civilian training on a partially or fully funded program. | June 15, 2016, 81 FR 39030; April 4, 2003, 68 FR 16484; July 27, 1993, 58 FR 40115; February 22, 1993, 58 FR 10159. |
| (q) Resident Individual Training Management System (RTIMS). | A0350–1a TRADOC | was established to automate processes associated with the scheduling, management, testing, and tracking of resident student training. | December 14, 2010, 75 FR 77584. |
| (r) Digital Training Management System. | A0350–1c TRADOC | was established to support the on-going digital training management task. | January 11, 2011; 76 FR 1606. |
| (s) ATLAS PRO Learning Suite | A0350–1d | was established to support student online certification and career management. | August 3, 2011; 76 FR 46767. |
| (t) Standardized Student Records System. | A0350–20a TRADOC | was established to obtain training, education, experiential learning, personal, and biographical data to present a comprehensive and personalized view of the student record, course enrollment, course completion, official grade transcript, statistical studies to improve training and testing methods, and course catalog information. | October 11, 2011; 76 FR 62788; October 5, 2011, 76 FR 61680. |
| (u) U.S. Army Medical Department School and Academy of Health Sciences Academic Records. | A0351a DASG | was established to determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses. | April 4, 2003, 68 FR 16484. |
| (v) Army Training Information Architecture -Learning Management System (ATIA–LMS). | A0351b TRADOC DoD | was established to record lessons and/or exam grades, maintain student academic status, course and sub course descriptions, produce course completion certificates and reflect credit hours earned, and produce management summary reports. | June 16, 2011,76 FR 35197. |
| (w) Enrollment, Registration and Course Completion Records. | V7–01 | was established for the DSS Training Office or Polygraph Institute personnel to prepare class rosters and provide basic administrative information on attendees. | August 17, 1999, 64 FR 44704, 44713. |
| (x) Defense Equal Opportunity Management Institute Integrated Database. | DPR 48 | was established to manage administrative and academic functions related to student registration and courses attempted and completed. | August 10, 2016; 81 FR 52835. |
| (y) Advanced Global Intelligence Learning Environment (AGILE). | LDIA 05–0003 | was established to ensure federal employees, contractors and active duty service members attain the knowledge and skills necessary to achieve Agency and Intelligence Community missions through a web-based training environment and to link such training to the user's personnel records. | May 18, 2012, 77 FR 29615; April 12, 2012, 77 FR 21974; March 24, 2008, 73 FR 15496. |
| (z) Learning Management System (LMS). | HDTRA 022 | was established to manage and administer training and development programs, to identify individual training needs, to screen and select candidates for training, and for reporting, forecasting, tracking, monitoring, and assessment purposes. | September 18, 2012; 77 FR 57561; December 18, 2007, 72 FR 71663. |
| (aa) Student Records | HDTRA 014 | was established to determine applicant eligibility, as a record of attendance and training, completion or elimination, as a locator, and a source of statistical information. | September 19, 2012, 77 FR 58105; May 9, 2007, 72 FR 26343. |
| (bb) Drill Instructor Evacuation Files System. | MMN00050 | was established to provide a record of training and quality of performance of Marine Corps personnel assigned as drill instructors. | February 22, 1993; 58 FR 10630, 10685. |
| (cc) Navy Training Management and Planning System (NTMPS). | NM01500–10 | was established to maintain a listing of training, education, and qualifications for use by Manpower, Personnel, Training and Education managers. | June 28, 2012; 77 FR 38608; August 24, 2005, 70 FR 49595. |
| (dd) Aviation Training Jacket | N01542–1 | was established to maintain an up-to-date student flight record and to evaluate the student's individual training progress and qualifications, including aircraft, medical and physiological qualifications. | March 18, 1997, 62 FR 12806. |

| System name | No. | Descriptions | History |
|---|---|---|---|
| (ee) Advanced Skills Management (ASM) System Records. | NM01500–3 | was established to maintain records concerning training, education, and qualifications of Navy and Marine Corps military, government and contractor personnel for use by Manpower, Personnel and Training managers. | November 12, 2008, 73 FR 66883. |
| (ff) Integrated Learning Environment (ILE) Classes. | NM01500–9 | was established to identify individuals who enroll and take computerized training courses offered through the Navy's Integrated Learning Environment (ILE). | November 12, 2008, 73 FR 66883. |
| (gg) Department of Defense Voluntary Education System (DoDVES). | NM01560–2 | was established to maintain educational records and track educational costs of those current and former service members who participate in voluntary educational programs to current and former military service members, including the Defense Activity for Non-Traditional Education Support program, assist military personnel in making successful transitions to second careers in teaching, provide referral assistance and placement services to departing, qualified, military personnel for schools serving low-income families, provide information to the Defense Finance and Accounting Service (DFAS) and to local DoD fiscal and accounting personnel for the purpose of financial management and funds disbursement; and promote partnerships between civilian and military communities through agreements with commercial testing agencies, colleges, universities, and educational associations. | December 11, 2006, 71 FR 71538. |
| (hh) Strategic Programs (SP) 205 Training Records. | N01000–6 | was established to provide support and track the training progress of naval personnel (commissioned officers and enlisted) who manage, operate, and maintain Strategic Weapons System (SWS) and Attack Weapon System (AWS). | October 30, 2015, 80 FR 66889. |
| (ii) iCompass, Learning Management System (LMS). | DWHS P50 | was established to manage and administer a Learning Management System (LMS) for training and development programs, to identify individual training needs, and for the purpose of reporting, tracking, assessing and monitoring training events, and DoD FM certifications. | November 05, 2015, 80 FR 68518; July 23, 2013, 78 FR 44100. |
| (jj) Sensitive Compartmented Information (SCI) Personnel. | F031 497IG A | was established to recommend/determine eligibility for access to SCI and to answer official inquiries involving an individual's eligibility/noneligibilty for access to SCI. | June 11, 1997, 62 FR 31793; February 22, 1993, 58 FR 10503. |
| (kk) Special Security Case Files | F031 497IG B | was established to evaluate the security acceptability of Air Force military and civilian and contractor personnel, applicants, enlistees and nominees for appointment, assignment or retention in sensitive positions with access to classified defense information or to restricted areas and locations in the interest of national security. | June 11, 1997, 62 FR 3193; February 22, 1993, 58 FR 10505. |
| (ll) Special Security Files | F031 AF SP N | was established to maintain temporary records of actions taken on cases where the individual's security clearance status may be affected. | June 11, 1997, 62 FR 3193; February 22, 1993, 58 FR 10503. |
| (mm) Personnel Security Operations Files. | DWHS P28 | was established to maintain security clearance and authorized access information. | January 21, 2016, 81 FR 3395; August 17, 2001. |
| (nn) Personnel Security, Suitability, and Homeland Security Presidential Directive 12 (HSPD–12) Adjudications. | DWHS P29 | was established to adjudicate personnel security investigations (initial, periodic and continuous) and incidents resulting in the issuance, denial, suspension or revocation of an individual's personnel security eligibility; to adjudicate favorable suitability and HSPD–12 determinations; and to determine appeals of personnel security eligibility denials and revocations. | January 21, 2016, 81 FR 3395; August 17, 2001. |
| (oo) The Enhanced Access Management System (TEAMS). | RDCAA 152.1 | was established to provide the DCAA Security Office with a ready reference of security information on DCAA personnel and to provide data to other offices as appropriate. | March 5, 2013, 78 FR 14282; April 29, 2004, 69 FR 23497. |
| (pp) Computer/Electronic Accommodations Program (CAP). | DHRA 15 | was established to document and track provided computer/electronic accommodations and perform operational duties to accomplish mission objectives. | September 23, 2020, 85 FR 59762. |
| (qq) Reasonable Accommodation Request. | S330–50 | was established for the purpose of considering, deciding, implementing requests for reasonable accommodation made by employees and applicants with disabilities and to document and track such requests and action taken. | November 12, 2008, 73 FR 66863. |
| (rr) Reasonable Accommodation Program Records. | DWHS P49 | was established to document requests for reasonable accommodation(s) (regardless of type of accommodation) and the outcome of such requests for employees of Washington Headquarters Services/Human Resources Directorate serviced components with known physical and mental impairments and applicants for employment with Washington Headquarters Services/Human Resources Directorate serviced components. | August 22, 2014, 79 FR 49763; December 9, 2011, 76 FR 76956. |
| (ss) Reasonable Accommodation Program. | HDTRA 023 | was established to provide reasonable accommodation(s) for individuals with known physical and mental impairments who have applied for employment or are employees of the DTRA. | September 19, 2012, 77 FR 58105; July 9, 2007, 72 FR 37201. |
| (tt) Deployment Management Records. | LDIA 06–0003 | was established to plan and manage support personnel who deploy in support of ongoing contingency operations for DIA missions. | March 26, 2010, 75 FR 14579. |

| System name | No. | Descriptions | History |
|---|---|---|---|
| (uu) Navy Mobilization Processing System. | N01070–13 | was established to provide end-to-end command visibility and control of integrated augmentation processes and automated workflow, for requesting manpower requirements, approving requirements, sourcing requirements, and writing orders for requirements, tracking, accounting, data collection, and coordination during activation/deactivation. | January 10, 2014, 79 FR 1844; April 11, 2007, 72 FR 18215. |
| (vv) Medical Readiness Reporting System (MRRS). | NM06150–6 | was established to track medical readiness to ensure individuals are medically eligible to be deployed and to track labs, exams, physicals, and immunization that impact medical readiness. | August 23, 2013, 78 FR 52518; January 28, 2013, 78 FR 5792; May 5, 2006, 71 FR 26481. |
| (ww) Readiness and Cost Reporting Program (RCRP) Records. | N03501–3 | was established to provide a standardized, enterprise-wide capability for the Navy Expeditionary Combat Command operating forces to measure, display and report the readiness status of personnel, equipment supply, training and ordnance resources and meet Defense Readiness Reporting System-Navy requirements. | July 22, 2010, 75 FR 42719. |
| (xx) Standards of Conduct, Conflict of Interest. | RDCAA 240.5 | was established to provide a historical reference file of cases that are of precedential value to ensure equality of treatment of individuals in like circumstances. | January 3, 2011, 76 FR 114. |
| (yy) Legal Opinions | RDCAA 240.3 | was established to maintain a historical reference for matters of legal precedence within DCAA to ensure consistency of action and the legal sufficiency of personnel actions. | February 5, 2015, 80 FR 6501; January 3, 2011, 76 FR 115. |
| (zz) Survey and Census Data Base. | DMDC 08 | was established to count DoD personnel and beneficiaries for evacuation planning, apportionment when directed by oversight authority and for other policy planning purposes, and to obtain characteristic information on DoD personnel and households to support manpower and benefits research; to sample attitudes and/or discern perceptions of social problems observed by DoD personnel and to support other manpower research activities; to sample attitudes toward enlistment in and determine reasons for enlistment decisions; and to support manpower research sponsored by the Department of Defense and the military services. | October 2, 2007, 72 FR 56062. |

[FR Doc. 2022–13666 Filed 6–24–22; 8:45 am]
BILLING CODE 5001–06–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP22–161–000]**

## Gulf South Pipeline Company, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Index 130 MS River Replacement Project

On April 8, 2022, Gulf South Pipeline Company, LLC (Gulf South) filed an application in Docket No. CP22–161–000 requesting a Certificate of Public Convenience and Necessity pursuant to Sections 7(b) and 7(c) of the Natural Gas Act to replace its existing natural gas pipeline facilities under the Mississippi River. The proposed project is known as the Index 130 MS River Replacement Project (Project) and would involve the replacement of Gulf South's existing pipelines in Ascension Parish, Louisiana. The purpose of the Project is to accommodate the Mississippi River Ship Channel Deepening Project, planned by the U.S. Army Corps of Engineers, in partnership with the Louisiana Department of Transportation and Development.

On April 25, 2022, the Commission 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—September 26, 2022
90-day Federal Authorization Decision Deadline [2]—December 27, 2022

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

### Project Description

To accommodate the Mississippi River Ship Channel Deepening Project, Gulf South proposes to replace via horizontal directional drill its Mississippi River Crossing, consisting of three 20-inch-diameter pipelines with approximately 5,750 feet of two 30-inch-diameter pipelines under the Mississippi River and install auxiliary and appurtenant equipment. Gulf South requests authorization to abandon three segments of the 20-inch-diameter Mississippi River Crossing pipeline by removal (combined total of approx. 9,455 feet) and the remaining pipeline in place (combined total of approx. 7,380 feet). Gulf South also proposes to reconfigure its existing mainline valve yards on the west and east banks of the Mississippi River—the Modeste Valve Site and Sugar Bowl Pig Trap/Valve Site, respectively. Where Gulf South's Index 804 connects to the Index 130 and Index 130L, the proposed reconfiguration will require expanding Index 804 by approximately 730 feet of 6-inch-diameter pipeline to the new tie-in location, and Gulf South proposes to remove the existing Sugar Bowl Pig Trap/Valve site.

### Background

On May 18, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Index 130 MS River Replacement Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local

[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.

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 a comment from the Louisiana Department of Transportation and Development, noting that Gulf South is responsible for obtaining all local, state, or federal permits required for the Project. The Commission also received comments from IMTT-Geismar, a landowner affected by the existing Gulf South facilities and the proposed Project. IMTT-Geismar states concern that the proposed Project will impact the landowner's current facilities and certain ongoing construction expansion plans. Comments were also filed by the U.S. Environmental Protection Agency, providing suggestions on Commission staff's analysis of the Project's purpose and need, environmental justice, climate change, greenhouse gases, wetlands, and air quality.

Any substantive comment filed in response to the Notice of Scoping will be addressed in 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.

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.,* CP22–161), 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: June 21, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–13638 Filed 6–24–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–7089–000]**

### Wynter, Jr., Rudolph L.; Notice of Filing

Take notice that on June 6, 2022, Rudolph L. Wynter, Jr. submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

*Comment Date:* 5:00 p.m. Eastern Time on June 27, 2022.

Dated: June 21, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–13635 Filed 6–24–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–9516–000]**

### Szekeres, Michelle V.; Notice of Filing

Take notice that on June 9, 2022, Michelle V. Szekeres submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For

assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

*Comment Date:* 5:00 p.m. Eastern Time on June 30, 2022.

Dated: June 21, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–13634 Filed 6–24–22; 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:* RP22–987–000.

*Applicants:* Natural Gas Pipeline Company of America LLC.

*Description:* § 4(d) Rate Filing: Amendments to Negotiated Rate Agreements Filing-Woodriver Energy LLC to be effective 6/17/2022.

*Filed Date:* 6/17/22.

*Accession Number:* 20220617–5101.

*Comment Date:* 5 p.m. ET 6/29/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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.

Dated: June 21, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–13647 Filed 6–24–22; 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:* EC22–78–000.

*Applicants:* Digihost International Inc., Fortistar North Tonawanda LLC.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Fortistar North Tonawanda LLC, et al.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5036.

*Comment Date:* 5 p.m. ET 7/12/22.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER22–1418–000.

*Applicants:* Trailstone Renewables, LLC.

*Description:* Supplement to March 22, 2022 Trailstone Renewables, LLC tariff filing.

*Filed Date:* 6/14/22.

*Accession Number:* 20220614–5203.

*Comment Date:* 5 p.m. ET 6/24/22.

*Docket Numbers:* ER22–1495–001.

*Applicants:* El Paso Electric Company.

*Description:* Tariff Amendment: Service Agreement No. 367, EPE and Solar PV Development to be effective 5/29/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5177.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–1566–002.

*Applicants:* Guernsey Power Station LLC.

*Description:* Tariff Amendment: Response to Deficiency Notice to be effective 5/16/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5163.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–1690–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Report Filing: 3931 Tyr Energy & Sunflower Meter Agent Agr Supplemental to be effective N/A.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5109.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–1698–001.

*Applicants:* EDF Spring Field WPC, LLC.

*Description:* Tariff Amendment: Amendment to 1 to be effective 6/28/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5142.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–1883–001.

*Applicants:* Ledyard Windpower, LLC.

*Description:* Tariff Amendment: Amendment to MBR Application and Request for Shortened Notice Period to be effective 7/16/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5137.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–2140–001.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Tariff Amendment: Errata to Termination of PG&E Llagas Energy Storage SGIA (SA 387) to be effective 6/30/2022.

*Filed Date:* 6/17/22.

*Accession Number:* 20220617–5160.

*Comment Date:* 5 p.m. ET 7/8/22.

*Docket Numbers:* ER22–2151–000.

*Applicants:* Power Authority of the State of New York, New York Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: Power Authority of the State of New York submits tariff filing per 35.13(a)(2)(iii): 205 Joint MTFIA among NYISO and NYPA for the CHPE Project SA No. 2710–CEII to be effective 6/3/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5000.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–2152–000.

*Applicants:* Consolidated Edison Company of New York, Inc.

*Description:* § 205(d) Rate Filing: Cost Sharing and Recovery Agreement of NYTO's to be effective 8/22/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5120.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–2153–000.

*Applicants:* Tri-State Generation and Transmission Association, Inc.

*Description:* § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 61 to be effective 8/22/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5130.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–2154–000.

*Applicants:* New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation,

Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Long Island Lighting Company d/b/a LIPA.

*Description:* § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYTOs proposed tariff revisions for cost recovery/allocation related to CLCPA to be effective 8/22/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5146.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–2155–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original NSA, SA No. 6511; Queue No. AE2–297 to be effective 5/27/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5151.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–2156–000.

*Applicants:* Tri-State Generation and Transmission Association, Inc.

*Description:* § 205(d) Rate Filing: Initial Filing of Service Agreement FERC No. 906 to be effective 8/22/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5169.

*Comment Date:* 5 p.m. ET 7/12/22.

*Docket Numbers:* ER22–2157–000.

*Applicants:* Orange and Rockland Utilities, Inc.

*Description:* § 205(d) Rate Filing: O&R Concurrence CSRA 6–21–2022 to be effective 8/22/2022.

*Filed Date:* 6/21/22.

*Accession Number:* 20220621–5180.

*Comment Date:* 5 p.m. ET 7/12/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 21, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–13645 Filed 6–24–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–2144–000]**

### Invenergy Nelson Expansion 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 Invenergy Nelson Expansion 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 July 11, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 21, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–13648 Filed 6–24–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–9501–000]**

### Buchanan, William K.; Notice of Filing

Take notice that on May 23, 2022, William K. Buchanan submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal**

**Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

*Comment Date:* 5:00 p.m. Eastern Time on June 28, 2022.

Dated: June 21, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–13637 Filed 6–24–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–2141–000]**

### Sun Mountain Solar 1, 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 Sun Mountain Solar 1, 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 July 11, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 21, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–13649 Filed 6–24–22; 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

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.

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. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or 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 |
|---|---|---|
| Prohibited: | | |
| None. | | |
| Exempt: | | |
| CP16–454–000 | 6–13–2022 | U.S. House of Representative Bill Johnson. |

Dated: June 21, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–13646 Filed 6–24–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–9502–000]**

### Brown, Michael K.; Notice of Filing

Take notice that on May 23, 2022, Michael K. Brown submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

*Comment Date:* 5:00 p.m. Eastern Time on June 28, 2022.

Dated: June 21, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–13636 Filed 6–24–22; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9962–01–OA]**

### Notification of a Public Meeting of the Chartered Science Advisory Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the chartered Science Advisory Board. The chartered SAB will meet to conduct quality reviews of two draft SAB reports: *Review of EPA's Analyses to Support EPA's National Primary Drinking Water Rulemaking for PFAS,* and *Review of the EPA's Draft Fifth Contaminant Candidate List (CCL 5).* The chartered SAB will also discuss any recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions with regard to SAB review of planned EPA actions.

**DATES:** The public meeting of the chartered Science Advisory Board will be held on Monday, July 18, 2022, from 1:00 p.m. to 6:00 p.m. (Eastern Time) and Wednesday, July 20, 2022, from 1:00 p.m. to 6:00 p.m. (Eastern Time).

**ADDRESSES:** The meeting will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wants further information concerning this notice may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone (202) 564–2155, or email at *armitage.thomas@epa.gov*. General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *https://sab.epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the chartered Science Advisory Board will hold a public meeting to discuss and deliberate on the topics below.

The Chartered SAB will conduct a quality review of the SAB PFAS Review Panel report titled *Review of EPA's Analyses to Support EPA's National Primary Drinking Water Rulemaking for PFAS.* Background information about this activity is available on the SAB website at: *https://sab.epa.gov/ords/sab/*

*f?p=114:18:1577890 6977107:::RP,18:P18_ID:2601*.

The Chartered SAB will also conduct a quality review of the SAB CCL5 Review Committee report titled *Review of the EPA's Draft Fifth Contaminant Candidate List (CCL 5)*. Background information about this activity is available on the SAB website at: *https://sab.epa.gov/ords/sab/f?p=114:18:1577890 6977107:::RP,18:P18_ID:2600*. The SAB quality review process ensures that all draft reports developed by SAB panels, committees, or workgroups are reviewed by the Chartered SAB before being finalized and transmitted to the EPA Administrator. These reviews are conducted in a public meeting as required by FACA.

The Chartered SAB will also discuss any recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions with regard to SAB review of other EPA planned actions. Under the SAB's authorizing statute, the SAB ''may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis'' of proposed rules. The SAB Work Group for Review of Science Supporting EPA Decisions is charged with identifying EPA planned actions that may warrant SAB review.

*Availability of Meeting Materials:* All meeting materials, including the agenda will be available on the SAB web page at *https://sab.epa.gov*.

*Procedures for Providing Public Input:* Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as the oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above by July 11, 2022, to be placed on the list of registered speakers.

*Written Statements:* Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by July 11, 2022, for consideration at the public meeting on July 18, 2022, and July 20, 2022. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

**V. Khanna Johnston,**

*Deputy Director, Science Advisory Board Staff Office.*

[FR Doc. 2022–13629 Filed 6–24–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2020–0392; FRL 8323.1–01–OW]**

## Draft Guidance for Vessel Sewage No-Discharge Zones

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) requests comments on draft updated guidance for state officials submitting applications to EPA to establish vessel sewage no-discharge zones under the Clean Water Act (CWA). The draft updated guidance is intended to clarify, simplify, and (once finalized) supersede EPA's existing vessel sewage no-discharge zone guidance. The draft updated guidance explains the information that a state must submit to EPA in an application to meet the regulatory requirements and provides greater insight into EPA's process for evaluating applications. Updates made to the guidance do not purport to impose any new requirements for state applications.

**DATES:** Comments must be received on or before August 26, 2022.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OW–2020–0392, 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:** Kelsey Watts-FitzGerald, Oceans, Wetlands, and Communities Division, Office of Water (4504T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–566–0232; email address: *watts-fitzgerald.kelsey@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

*A. Written Comments*

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2020–0392, 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.

## II. General Information

### *A. Does this action apply to me?*

EPA has developed an updated draft of existing guidance for the development of applications for vessel sewage no-discharge zones and seeks comment and technical input on issues associated with the guidance. The draft updated guidance will be of interest to state officials seeking to establish vessel sewage no-discharge zones, as well as the owners and operators of commercial and recreational vessels with installed toilets that may be impacted by vessel sewage no-discharge zone designations.

## III. Background

CWA Section 312 establishes the statutory framework through which EPA and the U.S. Coast Guard regulate the discharge of sewage from vessels with installed toilets operating in U.S. navigable waters. EPA is responsible for establishing national standards of performance for marine sanitation devices (MSDs) to prevent inadequately treated sewage from polluting U.S. waters, while the U.S. Coast Guard is responsible for issuing regulations governing the design, construction, certification, installation, and operation of MSDs, consistent with EPA's standards. MSDs are equipment installed onboard vessels that either treat sewage prior to discharge or store sewage onboard for later disposal. If a state determines that some or all of the state's waters require greater protection, the CWA allows the state to apply to EPA for the establishment of a vessel sewage no-discharge zone.

Sewage no-discharge zones are designated areas where the discharge of both treated and untreated sewage from vessels is prohibited. There are three different types of vessel sewage no-discharge zones under CWA Section 312. For each type, the state must submit an application to EPA pursuant to the regulatory requirements detailed in 40 CFR 140.4. The first type of designation (CWA Section 312(f)(3)) requires the state to obtain a determination from EPA that ''adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters proposed for designation.'' Following an affirmative determination from EPA, the state may then proceed with the designation of the no-discharge zone through state regulations. The other two types of sewage no-discharge zones are established for the protection and enhancement of the quality of specified waters and drinking water intakes (under CWA Sections 312(f)(4)(A) and (f)(4)(B), respectively). These designations are applied for by a state but designated by EPA and promulgated through federal regulations.

In 1994, EPA published guidance, ''Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials, Volume 1. Establishing No-Discharge Areas under § 312 of the Clean Water Act'' (EPA 842–B–94–004, August 1994), to assist states in preparing applications based on the regulatory requirements. EPA is updating the 1994 guidance and, through this Notice, soliciting feedback from the public on the new draft, titled, ''Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f)).'' The draft updated guidance will supersede the 1994 guidance once public comments have been considered and a notice of availability for the updated guidance is published in the **Federal Register**.

In developing the draft updated guidance, EPA sought to streamline the guidance, better clarify the required versus recommended information for inclusion in a state's application, and further describe the agency's processes for evaluating an application. Key updates related to the development of state applications include the addition of new guidance and sample applications for the two CWA Section 312(f)(4) designations, as well as updated introductory sections on the impact of sewage discharges and the regulatory framework in place to mitigate these impacts. The draft updated guidance also clarifies how to account for mobile pumpout facilities, such as boats and trucks, and provides additional information on how to demonstrate that sewage removed from vessels is being treated in conformance with federal law. Finally, in the sections pertaining to CWA Section 312(f)(3) applications, the draft updated guidance distinguishes between recreational and commercial vessels in acknowledgement of differing vessel profiles and pumpout facility needs.

Other updates were made to the 1994 guidance to explain EPA's process for evaluating state applications. The most substantial update to EPA's review process is the novel inclusion of a cost analysis for applications submitted under CWA Section 312(f)(3). The agency's statutory responsibility to determine whether adequate facilities are ''reasonably available'' speaks to the cost of that availability, as affirmed by the U.S. District Court for the District of Columbia (*see* Memorandum Opinion and Order, *American Waterways Operators* v. *EPA,* case no. 18–cv–2933 (APM), November 30, 2020). Because EPA must consider costs, the draft updated guidance contains new sections that propose how EPA would conduct cost analyses for CWA Section 312(f)(3) applications. These new sections are accompanied by a spreadsheet-based tool, the ''No-Discharge Zone Cost Analysis Tool,'' that EPA could use in future determinations to help standardize the agency's approach to evaluating the costs associated with applications submitted under CWA Section 312(f)(3). The draft cost tool also incorporates a screening analysis to estimate if sewage generation may exceed reception capabilities. While the statute requires that EPA consider costs during the review of CWA Section 312(f)(3) applications, the agency welcomes comments on the proposed approach to the cost analysis. Another change is the removal of the ''Boater Sanitary Waste Reception Facility Requirements Worksheet,'' which aggregated all vessel types, in favor of the new screening analysis described above for commercial vessels and a new ''Recreational Vessel Worksheet'' for recreational vessels.

## IV. Paperwork Reduction Act

The information collections associated with the vessel sewage no-discharge zone program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act through August 2022. The approved Information Collection Request (OMB control number 2040–0187) estimates both the burden to state respondents to apply for vessel sewage no-discharge zones and the burden to EPA to review state applications. Finalization of this draft updated guidance is not expected to result in

increased burden to state applicants, since the required elements of a state's application are defined by regulation and have not been changed. However, increased burden is anticipated for EPA due to the inclusion of a cost analysis for applications submitted under CWA Section 312(f)(3). EPA does not anticipate that the expected number of applications will change if this draft updated guidance is finalized, since preparation and submission of an application is entirely voluntary and driven by the state applicant's need to protect some or all of the state's waters from vessel sewage discharges.

EPA is currently in the process of requesting a renewal for this information collection. If finalization of this draft updated guidance results in a change to paperwork burden, EPA will revise the Information Collection Request.

**V. Request for Comment**

EPA is seeking public comment on both the draft updated guidance document and the associated draft cost tool. While EPA welcomes information and comments on all issues related to the guidance, this Notice requests specific comment, relevant information, or data on the following topics, as appropriate: (1) the types and availability of data and information being requested from state applicants, (2) whether additional clarifications are needed in any of the state application sections, (3) the appropriateness, use, and accuracy of default values and assumptions used in the draft cost tool, and (4) how frequently the agency should update the default values used in the draft cost tool.

The draft updated guidance document and draft cost tool are available for review in EPA's docket and on EPA's website at *https://www.epa.gov/vessels-marinas-and-ports/guidance-vessel-sewage-no-discharge-zone-applications.*

**Benita Best-Wong,**

*Deputy Assistant Administrator.*

[FR Doc. 2022–13657 Filed 6–24–22; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL TRADE COMMISSION

**[File No. 211 0140]**

## JAB/SAGE Veterinary; Analysis of Agreement Containing Consent Orders 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 methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before July 27, 2022.

**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: ''JAB/SAGE Veterinary; File No. 211 0140'' 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, Suite CC–5610, (Annex D), Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Mike Barnett (202–326–2362), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

**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 thirty (30) days. The following Analysis of Agreement Containing Consent Orders 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 from the FTC website at this web address: *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 July 27, 2022. Write ''JAB/SAGE Veterinary; File No. 211 0140'' 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.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be delayed. 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 ''JAB/SAGE Veterinary; File No. 211 0140'' 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, Suite CC–5610, (Annex D), 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 *https://www.regulations.gov*—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 *https://www.ftc.gov* to read this document and the news release describing this matter. 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 July 27, 2022. 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 Agreement Containing Consent Orders To Aid Public Comment**

**I. Introduction**

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') with JAB Consumer Partners SCA SICAR (''JAB''), the owner of Compassion-First Pet Hospitals and NVA Parent Inc. (collectively, ''Compassion-First/NVA''), and SAGE Veterinary Partners, LLC (''SAGE''), which is designed to remedy the anticompetitive effects that would result from Compassion First/NVA's proposed acquisition of SAGE.

Pursuant to an Equity Purchase Agreement dated June 14, 2021, Compassion-First/NVA proposes to acquire SAGE for approximately $1.1 billion (the ''Acquisition''). Both parties provide specialty and emergency veterinary services in clinics located in the United States. The Commission alleges in its Complaint that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 8, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the markets for certain specialty and emergency veterinary services in three different localities in the United States. The Consent Agreement, which contains the proposed Decision and Order (''D&O'') and Order to Maintain Assets, will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Acquisition. Specifically, under the terms of the D&O, Compassion-First/NVA is required to divest six clinics to United Veterinary Care, LLC (''UVC''), an operator of specialty and emergency veterinary clinics elsewhere in the country. In order to protect robust future competition in markets trending towards increased consolidation, including due to acquisitions by JAB that may or may not be reportable under the Hart-Scott-Rodino Premerger Notification Act (''HSR''), the D&O provides for (1) a statewide prior approval by the parties in Texas and California for acquisitions proximate to existing and future NVA emergency and specialty clinics, and (2) a nationwide prior notice for proposed acquisitions proximate to existing and future NVA emergency and specialty clinics.

The Consent Agreement with the proposed D&O and the Order to Maintain Assets has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the D&O as well as any comments received, and decide whether it should withdraw, modify, or make the D&O final. The Commission is issuing the Order to Maintain Assets when the Consent Agreement is placed on the public record.

**II. The Relevant Markets and Market Structures**

The relevant lines of commerce in which to analyze the Acquisition are individual specialty veterinary services and emergency veterinary services. Specialty veterinary services are required in cases where a general practitioner veterinarian does not have the expertise or equipment necessary to treat the sick or injured animal. General practitioner veterinarians commonly refer such cases to a specialist, typically a doctor of veterinary medicine who is board-certified in the relevant specialty. Individual veterinary specialties include internal medicine, neurology, medical oncology, critical care, ophthalmology, and surgery. Emergency veterinary services are those used in acute situations where a general practice veterinarian is not available or, in some cases, not trained or equipped to treat the patient's medical problem.

The relevant areas for the provision of specialty and emergency veterinary services are local in nature, delineated by the distance and time that pet owners travel to receive treatment. The distance and time customers travel for specialty services are highly dependent on local factors, such as the proximity of a clinic offering the required specialty service, appointment availability, population density, demographics, traffic patterns, or specific local geographic impediments like large bodies of water or other geographic impediments.

The Acquisition is likely to result in consumer harm in markets for the provision of the following services in the following localities:

a. internal medicine, neurology, medical oncology, critical care, and surgery veterinary specialty services and emergency veterinary services in and around Austin, Texas;

b. internal medicine, neurology, ophthalmology, and surgery veterinary specialty services and emergency veterinary services in and around San Francisco, California; and

c. internal medicine, medical oncology, and surgery veterinary specialty services in addition to emergency veterinary services in the area in and between Oakland, Berkeley, and Concord, California.

All of these relevant markets are currently highly concentrated, and the Acquisition would substantially increase concentration in each market. In some cases, the combined firm would be the only provider following the transaction. In other markets, consumers would only have one remaining alternative to the combined firm following the transaction.

**III. Entry**

Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. For *de novo* entrants, obtaining financing to build a new specialty or emergency veterinary facility and acquiring or leasing necessary equipment can be expensive and time consuming. The investment is risky for specialists that do not have established practices and bases of referrals in the area. Further, to become a licensed veterinary specialist requires extensive education and training, significantly beyond that required to become a general practitioner veterinarian. Consequently, veterinary specialists are often in short supply, and recruiting them to move to a new area frequently takes more than two years, making timely expansion by existing specialty clinics particularly difficult.

**IV. Effects of the Acquisition**

The Acquisition, if consummated, may substantially lessen competition in each of the relevant markets by eliminating close, head-to-head competition between Compassion-First/NVA and SAGE for the provision of specialty and emergency veterinary services. In some markets, the Acquisition will result in a merger to monopoly. The Acquisition increases the likelihood that Compassion First will unilaterally exercise market power and cause customers to pay higher

prices for, or receive lower quality, relevant services.

## V. The Proposed Decision and Order

The proposed D&O remedies the Acquisition's anticompetitive effects in each market by requiring the parties to divest six facilities [1] to UVC. The divestitures will preserve competition between the divested clinics and the combined firm's clinics. UVC is a qualified acquirer of the divested assets because it has experience acquiring, integrating, and operating specialty and emergency veterinary clinics. UVC does not currently operate or have plans to operate any specialty and emergency veterinary clinics in the relevant markets.

The D&O requires the divestiture of all regulatory permits and approvals, confidential business information, including customer information, and other assets associated with providing specialty and emergency veterinary care at the divested clinics. To ensure the divestiture is successful, the D&O also requires Compassion-First/NVA and SAGE to secure all third-party consents, assignments, releases, and waivers necessary to conduct business at the divested clinics.

The D&O also requires Compassion-First/NVA and SAGE to provide reasonable financial incentives to certain employees to encourage them to stay in their current positions. Such incentives may include guaranteed retention bonuses for specialty veterinarians at divestiture clinics. These incentives will encourage veterinarians to continue working at the divestiture clinics, which will ensure that UVC is able to continue operating the clinics in a competitive manner.

Finally, the D&O contains other provisions to ensure that the divestitures are successful. For example, Compassion-First/NVA will be required to provide transitional services for a period of up to one year to ensure UVC continues to operate the divested clinics effectively as it implements its own quality care, billing, and supply systems.

Additionally, because of the growing trend towards consolidation in specialty and emergency veterinary services markets across the country, as well as the likelihood of future acquisitions by JAB in these markets, many of which may be non-HSR reportable, the D&O includes (1) a statewide prior approval by the parties in Texas and California for acquisitions proximate to existing and future NVA emergency and specialty clinics, and (2) a nationwide prior notice for proposed acquisitions proximate to existing and future NVA emergency and specialty clinics. These provisions are effective for ten years. UVC will also be required to obtain prior approval from the Commission before transferring any of the divested assets to any buyer for a full ten years after UVC acquires the divestiture assets, except in the case of a sale of all or substantially all of UVC's business.

The Commission will appoint Dr. Michael Cavanaugh, DVM, to act as an independent Monitor to oversee the Respondents' compliance with the requirements of the Order, and to keep the Commission informed about the status of the transfer of the divested clinics to UVC. The D&O requires Compassion-First/NVA and SAGE to divest the clinics no later than ten business days after the consummation of the Acquisition.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. It is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

By direction of the Commission.

**April J. Tabor,**

*Secretary.*

## Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya

In June 2021, JAB Consumer Partners SCA SICAR (''JAB'') proposed to buy SAGE Veterinary Partners, LLC (''SAGE''). JAB is a $55 billion private equity fund whose investments span a host of consumer-facing businesses, from Keurig, Dr. Pepper, and Panera Bread to Krispy Kreme and Bally.[1] In recent years, JAB has expanded into pet care and pet health services. JAB's proposed transaction here would combine its existing holdings of Compassion-First Pet Hospitals and National Veterinary Associates (''NVA'') with SAGE to form an entity that controls nearly 100 specialty and emergency clinics throughout the country. After conducting a thorough investigation here, the Commission determined it had reason to believe this deal—JAB's proposed acquisition of SAGE—was illegal, alleging in its complaint the deal would have enabled the firm to establish a dominant position in key markets for specialty and emergency veterinary services in California and Texas.

This is not the first time that JAB and its entities have proposed a deal the Commission alleged was unlawful. In 2020, the FTC brought an action against an earlier acquisition by JAB's entities when JAB first acquired NVA.[2] In the complaint issued in that action, the FTC alleged that JAB's combined ownership of Compassion-First Pet and NVA violated the antitrust laws and ordered JAB to divest three clinics. The entities before us have repeatedly proposed acquisitions that the Commission has had reason to believe would violate the antitrust laws.

As is routine in Commission actions, the FTC's proposed relief would require a host of divestitures in both states. Critically, however, the proposed order here goes further, addressing not only the allegedly unlawful aspects of this specific acquisition but also establishing key safeguards against future dealmaking that may also prove unlawful. These extra protections are warranted given that this is the second Commission consent order against JAB, the rapid pace of JAB/NVA's ongoing acquisitions of veterinary clinics throughout the country, and the ongoing consolidation in the industry.[3]

Because the deal may illegally lessen competition in three local markets in California and Texas—in and around Austin, Texas; San Francisco, California; and the East Bay—the FTC's proposed order would require JAB to divest clinics in these markets. This

[1] The divested clinics include (1) SAGE's Central Texas Veterinary Specialty & Emergency Hospital (North, South, and Round Rock facilities) in Austin, Texas; and (2) Compassion-First/NVA's North Peninsula Veterinary Emergency Clinic (San Mateo), PETS Referral Center (Berkeley), and Solano-Napa Pet Emergency Clinic (Fairfield) in and around San Francisco, Berkeley, Oakland, and Concord, California. The divestitures include all assets, including equipment and intellectual property, necessary to compete effectively in each relevant market.

[1] JAB Holding Co., Annual Report, at 4 (2021), *https://www.jabholco.com/documents/2/JAB_Holding_Company_S.%C3%A0.r.l.-Annual_Report_2021.pdf.*

[2] Press Release, Fed. Trade Comm'n, FTC Requires Veterinary Service Providers Compassion First and National Veterinary Associates to Divest Assets in Three Local Markets (Feb. 14, 2020), *https://www.ftc.gov/newsevents/news/press-releases/2020/02/ftc-requires-veterinary-service-providers-compassion-first-national-veterinaryassociates-divest.*

[3] Ross Kelly, Pandemic Hastens Ongoing Trend in Veterinary Consolidation, VINNEWS (Dec. 30, 2021) (''Frenetic merger activity among veterinary hospitals in 2021 has lifted the market share of corporate consolidators in the United States to close to 50% of all companion animal practice revenue by at least one estimate, as the pandemic spurs demand for pet-care services.''), *https://news.vin.com/default.aspx?pid=210&Id=10652228.* This rapid consolidation is happening worldwide and gaining the attention of antitrust enforcers in other countries, too. Ross Kelly, Competition Watchdog Bares Teeth Again in Veterinary Realm, VINNEWS (May 4, 2022), *https://news.vin.com/default.aspx?pid=210&catId=620&Id=10922952* (noting recent U.K. Competition and Markets Authority challenges to veterinary mergers there).

type of relief is a staple of the FTC's merger enforcement program: the agency identifies specific local markets where the merging parties have overlapping assets and where the deal would therefore most directly reduce competition, and it requires the merging companies to divest those overlapping assets to a separate buyer.

This proposed order, however, has two additional key protections. First, if JAB seeks to buy a specialty or emergency veterinary clinic located within 25 miles of any JAB clinic anywhere in California or Texas in the next 10 years, JAB will first have to seek the FTC's affirmative approval for the purchase. By covering *all* future acquisitions within a short driving distance of clinics that JAB already owns in California and Texas, the order establishes heightened protections that extend beyond the specific local markets at issue in this transaction. Moreover, the heightened protections will cover not just overlaps with clinics that JAB owns today, but also with any clinics that JAB subsequently owns in California and Texas—a feature of the order that helps future-proof the relief.

Second, the order will require JAB to provide 30-day advance written notice before JAB (including its relevant operating companies, Compassion-First Pet Hospitals and National Veterinary Associates) attempts to acquire a specialty or emergency veterinary clinic within 25 miles of a JAB clinic *anywhere* in the United States that JAB owns now or in the future. This provision—the first of its kind in a Commission order—ensures that the FTC will have advance notice of any unreported purchases that would ordinarily escape our review, providing the agency with the opportunity to investigate those transactions before they are consummated.

These prior approval and nationwide prior notice provisions are one way that the FTC can more closely monitor the potentially unlawful dealmaking activities of companies like JAB/NVA that have repeatedly attempted acquisitions the Commission alleged were unlawful. As we explained last year when we reinitiated the agency's use of prior approval and prior notice, the Commission must use all of its tools and authorities to protect Americans from potentially unlawful deals—and prior approval provisions in particular can help deter anticompetitive deals and conserve scarce FTC resources.[4] Indeed, the prior notice provision in the earlier order involving JAB has had a beneficial effect. And just recently, for example, the FTC conditioned a merger in gasoline markets, in which one of the parties explicitly sought to ''try to take over'' the Utah gasoline marketplace, with a prior approval requirement designed to thwart any such future efforts by the parties to acquire market power and raise gas prices for the America public.[5]

Provisions like the ones in this matter will also allow the FTC to better address stealth roll-ups by private equity firms like JAB/NVA and serial acquisitions by other corporations. Antitrust enforcers must be attentive to how private equity firms' business models may in some instances distort incentives in ways that strip productive capacity, degrade the quality of goods and services, and hinder competition.[6] Private equity firms' playbook for purchasing or investing in companies can include tactics such as leveraged buyouts, which saddle businesses with debt and shift the burden of financial risk in ways that can undermine long-term health and competitive viability.[7] While private equity firms can support capacity expansion and upgrades, firms that seek to strip and flip assets over a relatively short period of time are focused on increasing margins over the short-term, which can incentivize unfair or deceptive practices and the hollowing out of productive capacity. Meanwhile, serial acquisitions or ''buy-and-buy'' tactics can be used by private equity firms and other corporations to roll up sectors, enabling them to accrue market power and reduce incentives to compete, potentially leading to increased prices and degraded quality.[8]

Private equity firms have been particularly active in health care, including anesthesiology, emergency medicine, hospice care, air ambulances, and opioid treatment centers. A focus on short-term profits in the health care context can incentivize practices that may reduce quality of care, increase costs for patients and payors, and generate appalling patient outcomes.[9] Research and reporting suggests these effects are especially pronounced in specialty practices, such as elder care and disability care facilities. Research has shown that private equity ownership of elder care facilities is correlated with increased deaths at those nursing homes, potentially owing to cost-cutting measures like staffing reductions.[10] In another case, as one firm consolidated ownership of group homes for people with disabilities, media reporting revealed repeated failed inspections, overworked staff, and even deaths.[11]

Commissioners Phillips and Wilson take issue with the scope of the prior approval and prior notice in our proposed order, arguing that these heightened protections are not warranted because this acquisition by JAB raises no special concern, and that consolidation at a national level is ''irrelevant'' and ''not inherently concerning.'' [12] But this critique is belied by both market realities and prevailing law. For one, JAB has been rapidly acquiring veterinary clinics throughout the country, and it would be unwise for enforcers to ignore how private equity funds in particular can be incentivized to engage in roll-up strategies. The law also grants the FTC discretion to order fencing-in relief, particularly when confronting a repeat offender.[13] Moreover, the statement that

[4] Fed. Trade Comm'n, Statement of the Commission on Use of Prior Approval Provisions in Merger Orders, *https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf.*

[5] Press Release, Fed. Trade Comm'n, FTC Requires ENCAP to Sell Off EP Energy Corp.'s Entire Utah Oil Business amid Concerns that Deal would Increase Pain at the Pump (Mar. 25, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-requires-encap-sell-ep-energy-corps-entire-utah-oil-business-amid-concerns-deal-would-increase.*

[6] *See, e.g.,* Eileen Appelbaum & Rosemary Batt, Private Equity At Work: When Wall Street Manages Main Street (2014).

[7] *Id.*

[8] Statement of Commissioner Rohit Chopra Regarding Private Equity Roll-ups and the Hart-Scott Rodino Annual Report to Congress (July 8, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1577783/p110014hsrannualreportchoprastatement.pdf.*

[9] Richard M. Scheffler et al., *Soaring Private Equity Investment in the Healthcare Sector: Consolidation Accelerated, Competition Undermined, and Patients at Risk,* Petris Ctr. on Health Care Mkts. and Consumer Welfare 2 (May 18, 2021), *https://publichealth.berkeley.edu/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL.pdf. See also* Melea Atkins, The Impact of Private Equity on Nursing Home Care: Recommendations for Policymakers, ROOSEVELT INST. 2 (Apr. 2021), *https://rooseveltinstitute.org/wp-content/uploads/2021/04/RI_NursingHomesandPE_IssueBrief_202104.pdf.*

[10] Atul Gupta et al., *Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes* 2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28474, 2021), *https://www.nber.org/system/files/working_papers/w28474/w28474.pdf.*

[11] Kendall Taggart et al., *The Private Equity Giant KKR Bought Hundreds of Homes for People With Disabilities. Some Vulnerable Residents Suffered Abuse And Neglect.,* BuzzFeed News (Apr. 25, 2022), *https://www.buzzfeednews.com/article/kendalltaggart/kkr-brightspring-disability-private-equity-abuse.*

[12] Concurring Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson, JAB Consumer Partners SCA SICAR/SAGE Veterinary Partners, LLC (Comm'n File No. 2110140) (June 9, 2022).

[13] *Telebrands Corp.* v. *F.T.C.,* 457 F.3d 354, 358 (4th Cir. 2006) (noting that evidence of prior violations supports stronger relief). FTC orders ''may prohibit not only the further use of the precise practice found to have existed in the past,

consolidation at a national level should play no role in our analysis is also at odds with governing Supreme Court precedent, which states that assessing general industry trends is a basic component of merger analysis.[14] Ignoring this mandate raises rule of law concerns.

Strategic use of prior notice and prior approval provisions is one way that the Commission can better track and prevent unlawful acquisitions by private equity firms and other corporations. Our revision of the merger guidelines provides an additional opportunity to ensure our tools reflect current market realities, including the expanding role of private equity in our economy.[15] In the meantime, we will continue to use our existing authorities to fully protect Americans from unlawful transactions.

**Concurring Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson**

The proposed consent order announced today settles the Commission's allegations that the proposed acquisition of SAGE Veterinary Partners, LLC (''SAGE'') by JAB Consumer Partners SCA SICAR (''JAB''), the owner of Compassion-First Pet Hospitals and NVA Parent Inc. (collectively, ''Compassion-First/NVA''), may substantially lessen competition for individual specialty veterinary services and emergency veterinary services in three local markets: (i) Austin, TX; (ii) in and around San Francisco, CA; and (iii) in and between Oakland, Berkeley, and Concord, CA. The proposed divestiture resolves all competitive overlaps between Compassion-First/NVA and SAGE in the alleged relevant markets.

Because it does so, we voted to accept this proposed consent order for public comment. But we write separately to object to the Complaint's invocation of rhetoric unrelated to competition and the order's apparent predication of remedies upon both that rhetoric and the majority's evident distaste for private equity as a business model, instead of the facts uncovered in the investigation.

The Complaint alleges a ''growing trend towards consolidation in the emergency and specialty veterinary services markets across the United States in recent years by large chains''.[1] That allegation, and Chair Khan's concurrently-released statement regarding private equity as a business model,[2] are the apparent bases for imposing broad prior approval and prior notice requirements on the parties.[3] Even though we found competitive problems in just the three local markets discussed above, we are imposing prior approval requirements across California and Texas, and prior notice requirements across the entire United States.

The ''growing trend'' allegation, in isolation, is not an appropriate basis for incremental remedies. *First,* our investigation revealed that the relevant competition occurs at the local level, driven by the distance and time that pet owners are willing to travel to obtain each relevant veterinary service. That is why the Complaint pleads local markets and the divestitures are designed to resolve overlaps in three specific local areas—two across the Bay Bridge from one another. For competition purposes, there is no national antitrust market for emergency and specialty veterinary services. To the extent there is consolidation on a national level, based on what the Commission pleads in the Complaint, it is irrelevant.[4] It is also not inherently concerning. Our review of the evidence makes clear that the bulk of emergency and specialty veterinary clinics nationwide are independent, with larger ''aggregators'' like JAB and SAGE collectively controlling a minority of clinics. Post-acquisition, JAB will hold fewer than 100 clinics nationwide, a competitively meaningless share of the purported national market. *Cf. U.S.* v. *Von's Grocery Co.* 384 U.S. 270 (1966). *Second,* we have seen no evidence that such a trend, if it exists, is bad for purposes of competition. That is, there are no discernible anticompetitive effects.

While untethered to any impact on competition, the allegation of the purported trend in nationwide consolidation appears to form the sole basis in the Complaint for imposing out-of-market prior approval and prior notice requirements. Chair Khan's statement also argues that the fact that JAB is a private equity firm requires additional remediation, but neither the Complaint nor the Analysis of Agreement Containing Consent Orders to Aid Public Comment—nor, in our view, the evidence uncovered in the investigation—indicate any reason why this fact about JAB makes this or any other private equity transaction more likely to raise competition concerns.[5] Imposing heightened legal obligations on disfavored groups—including private equity—because of who they *are* rather than what they have *done* raises rule of law concerns.

The parties are subject to statewide prior approval in Texas and California and nationwide prior notice. The Commission's Prior Approval Policy Statement (''Prior Approval Policy'') contemplates that the Commission might impose a prior approval requirement that covers product or geographic markets beyond the relevant

but also, the future use of related and similar practices.'' *Carter Prods., Inc.* v. *F.T.C.*, 323 F.2d 523, 532–33 (5th Cir. 1963) (internal quotation marks and citation omitted). The Commission has wide discretion to fashion a remedy appropriate to the unlawful practices found. *Jacob Siegel Co.* v. *F.T.C.*, 327 U.S. 608, 612–13 (1946); accord *Fed. Trade Comm'n* v. *Cement Inst.*, 333 U.S. 683, 726 (1948); *Carter Prods., Inc.* v. *F.T.C.*, 323 F.2d 523, 532–33 (5th Cir. 1963).

[14] *See, e.g., Brown Shoe Co.* v. *United States,* 370 U.S. 294, 322 (1962) (''Congress indicated plainly that a merger had to be functionally viewed, in the context of its particular industry. That is, whether the consolidation was to take place in an industry that was fragmented, rather than concentrated, that had seen a recent trend toward domination by a few leaders, or had remained fairly consistent in its distribution of market shares among the participating companies . . . all were aspects, varying in importance with the merger under consideration, which would properly be taken into account.''). See id. at 332–33 (''Another important factor to consider is the trend toward concentration in the industry. . . . [R]emaining vigor cannot immunize a merger if the trend in that industry is toward oligopoly.''). *Id.* at 344–45 (''Other factors to be considered in evaluating the probable effects of a merger in the relevant market lend additional support to the District Court's conclusion that this merger may substantially lessen competition. One such factor is the history of tendency toward concentration in the industry.'').

[15] Press Release, Fed. Trade Comm'n, Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers (Jan. 18, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers. See also Regulations.gov,* Request for Information on Merger Enforcement, FTC–2022–0003 (Jan. 18, 2022), *https://www.regulations.gov/document/FTC-2022-0003-0001.*

[1] Complaint, *In re JAB Consumer Partners SCA SICAR/SAGE Veterinary Partners, LLC, File No. 2110140,* paragraph 9 (June 2, 2022).

[2] Commissioners Bedoya and Slaughter join the Chair in her statement.

[3] The parties are in the best position to evaluate whether the benefits of a transaction and the certainty of a consent order outweigh the costs. So, we do not necessarily oppose consents on the grounds that they include provisions that are unnecessary, overly broad, and counterproductive.

[4] Chair Khan's statement argues that our critique here is belied by ''market realities.'' According to the Complaint and the Analysis of Agreement Containing Consent Orders to Aid Public Comment voted on by this Commission, however, the reality of competition in the markets in question is that it is local.

[5] Chair Khan's statement points to buyouts by private equity firms that ''saddle businesses with debt.'' Public companies also sometimes choose to finance operations and acquisitions with debt. *See e.g.,* Frances Yoon, *The World's Appetite for Debt Is Smashing Records,* Wall St. J. (Nov. 30, 2020), *https://www.wsj.com/articles/the-world-is-bingeing-on-debtand-smashing-records-11606732203. See also* Franco Modigliani & Merton H. Miller, *The Cost of Capital, Corporation Finance and The Theory of Investment,* 48 a.m. Econ. Rev 261 (1958).

ones affected by the merger.[6] Most of the bases for imposing out-of-market remedies are not met here—for example, if ''the *relevant market alleged* is already concentrated or has seen significant consolidation in the previous ten years'' (emphasis added).[7] The Complaint does not allege that the three relevant geographic markets here have seen significant consolidation.

The Chair also justifies the broad prior approval provision because JAB previously acquired clinics and entered into a related consent order. In that prior matter, JAB approached the Commission with a proposed acquisition and worked with it to resolve competitive overlaps, small parts of a much larger transaction.[8] That process enabled the FTC to ensure that overlapping assets were divested to an acceptable buyer, which is critical to maintaining competition.[9] The effect of imposing broader prior approval requirements because of such settlements will be to deter not mergers, but settlements. It will deter parties from submitting for agency review the complete set of assets subject to the deal, instead ''fixing it first'': selling what they want to whom they want. The Commission has traditionally eschewed this approach because it reduces our ability to ensure the robustness of the divestiture and the quality of the buyer and because, without a consent order, there is no accountability should parties fail to meet their obligations. Fix-it-first transactions remove Commission oversight and increase the likelihood that competition will not be preserved and that consumers will be harmed.

As we warned when the Commission (actually, two sitting Commissioners and a zombie vote) issued the ill-advised Prior Approval Policy, the broad and subjective factors enunciated in that policy lack limiting principles and are almost certain to lead to the routine imposition of prior approval provisions on geographic and product markets beyond those at issue in any given merger. We acknowledge that there are cases where the evidence supports the imposition of these more onerous remedies.[10] This does not appear to be one of those cases.

We encourage comments during the public comment period regarding the statewide prior approval and nationwide prior notice provisions that appear in today's consent order. In addition, we encourage comments on the implications of the agency's apparent shift to an approach that incentivizes fix-it-firsts.

[FR Doc. 2022–13584 Filed 6–24–22; 8:45 am]

**BILLING CODE 6750–01–P**

[6] Statement of the Commission on Use of Prior Approval Provisions in Merger Orders (Oct. 25, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf* (hereinafter ''Prior Approval Policy''). *But see* Dissenting Statement of Commissioners Christine S. Wilson and Noah Joshua Phillips Regarding the Statement of the Commission on Use of Prior Approval Provisions in Merger Orders (Oct. 29, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1598095/wilson_phillips_prior_approval_dissentingstatement102921.pdf.*

[7] Prior Approval Policy, p. 2.

[8] *See* Press Release, *FTC Requires Veterinary Service Providers Compassion First and National Veterinary Associates to Divest Assets in Three Local Markets* (Feb. 14, 2020), *https://www.ftc.gov/news-events/news/press-releases/2020/02/ftc-requires-veterinary-service-providers-compassion-first-national-veterinary-associates-divest* (The FTC required divestiture of 3 out of over 70 clinics operated by the parties).

[9] *See e.g., The FTC's Merger Remedies 2006–2012: A Report of the Bureaus of Competition and Economics* (Jan. 2017), *https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf.*

[10] Decision, *In re DaVita Inc./Total Rental Care, Inc., File No. 2110013* (Oct. 25, 2021) *https://www.ftc.gov/system/files/documents/cases/davita_order_9_24_final.pdf* (DaVita was subject to a statewide prior provision, requiring prior approval from the Commission before acquiring any new ownership interest in a dialysis clinic in Utah.).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Family Reunification Packet for Sponsors of Unaccompanied Children (OMB #0970–0278)

**AGENCY:** Office of Refugee Resettlement, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on revisions to an approved information collection. The request consists of several forms that allow the Unaccompanied Children (UC) Program to assess the suitability of potential sponsors for UC.

**DATES:** *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* ORR proposes the following revisions to this information collection:

For all forms, ORR replaced the term ''minor'' with ''child.''

- Authorization for Release of Information—
  - ORR replaced the term ''minor'' with ''child.''
  - ORR removed the Alien Registration Number field, since it is not required for background checks.
  - ORR removed reference to ''past and present immigration status,'' since that information will no longer be collected in the Family Reunification application.
- Family Reunification Application—
  - ORR replaced the term ''minor'' with ''child.''
  - Proof of Identity—ORR added clarification that individuals under the age of 21 may use the ORR Verification of Release form with a photograph to meet this requirement.
  - Proof of Immigration Status or U.S. Citizenship—ORR removed the requirement that potential sponsors provide documentation verifying their immigration status or U.S. citizenship. ORR no longer uses this information as a criterion to determine when a sponsor care plan is required; therefore, it is no longer necessary to collect this information.
  - Proof of Address—ORR also removed the phrase ''dated within the last two months'' that appears after the current lease line item, because it is not applicable to that acceptable form of documentation.
  - Burden Estimate—ORR increased the average burden hours per response from 0.75 hours to a more accurate estimate of 1.0 hour.
- Letter of Designation for Care of a Minor—
  - ORR replaced the term ''minor'' with ''child.''
  - ORR also increased the average burden hours per response from 0.5 hours to a more accurate estimate of 0.75 hours.

*Respondents:* Potential sponsors of UC.

*Annual Burden Estimates:*

RESPONDENTS

| Instrument title | Annual total number of respondents | Annual total number of responses per respondent | Average burden hours per response | Annual total burden hours |
|---|---|---|---|---|
| Authorization for Release of Information (Forms FRP–2 & FRP–2s) | 81,532 | 1 | 0.50 | 40,766 |
| Family Reunification Application (Forms FRP–3 & FRP–3s) | 122,950 | 1 | 1.00 | 122,950 |
| Fingerprinting Instructions (Forms FRP–7 & FRP–7s) | 81,532 | 1 | 1.25 | 101,915 |
| Letter of Designation for Care of Minor (Forms FRP–9 & FRP–9s) | 41,181 | 1 | 0.75 | 30,886 |
| Estimated Annual Burden Total | | | | 296,517 |

RECORD KEEPERS

| Instrument title | Annual total number of record keepers | Annual total number of responses per record keeper | Average burden hours per response | Annual total burden hours |
|---|---|---|---|---|
| Authorization for Release of Information (Forms FRP–2 & FRP–2s) | 235 | 347 | 0.25 | 20,386 |
| Family Reunification Application (Forms FRP–3 & FRP–3s) | 235 | 523 | 0.25 | 30,726 |
| Fingerprinting Instructions (Forms FRP–7 & FRP–7s) | 235 | 347 | 1.00 | 81,545 |
| Letter of Designation for Care of Minor (Forms FRP–9 & FRP–9s) | 235 | 175 | 0.25 | 10,281 |
| Estimated Annual Burden Hours Total | | | | 142,938 |

*Authority:* 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno* Settlement Agreement, No. CV85–4544–RJK (C.D. Cal. 1996).

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

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**BILLING CODE 4184–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Recordkeeping for New Vaccine and Mask Requirements To Mitigate the Spread of COVID–19 in Head Start (OMB #0970–0583)

**AGENCY:** Office of Head Start, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Office of Head Start (OHS), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) requests public comment on an extension with no changes to recordkeeping requirements for ACF Head Start grantees. An Interim Final Rule with Comment Period (IFC) was published on November 30, 2021 that established the COVID–19 vaccination requirements whereby all Head Start staff, certain contractors, and volunteers must be vaccinated for COVID–19 by January 31, 2022. OHS requested and received emergency approval from the Office of Management and Budget (OMB) to implement the associated recordkeeping requirements for 6 months. This request will extend approval beyond the current expiration date (6/30/2022). ACF is currently in the final rulemaking process. If the requirements in the final rule differ from the IFC in a way that alters recordkeeping requirements, ACF will make those changes in coordination with OMB.

**DATES:** *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* This request is for recipients of Head Start funding to continue to (1) collect and maintain records on the vaccination status of staff (including certain contractors) and volunteers in Head Start and Early Head Start programs and (2) develop and maintain a written COVID–19 testing protocol for individuals granted vaccine exemptions that was established through the IFC (86 FR 68052). There is no standard instrument required to be used to meet these recordkeeping requirements. Burden estimates have been updated to reflect more recent data available.

*Respondents:* Recipients of Head Start funding.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Responses per respondent | Average annual burden hours | Annual burden hours |
|---|---|---|---|---|
| Staff, Contractor, and Volunteer Reporting of New Vaccination | 75,000 | 1 | 0.6667 | 50,002.5 |
| Staff, Contractor, and Volunteer Reporting of Existing Vaccination | 320,000 | 1 | 0.0833 | 26,656 |
| Staff, Contactor, and Volunteer Requesting and Processing Vaccination Exemption | 5,000 | 1 | 0.5000 | 2,500 |
| Grant Recipient Maintaining Vaccination Records | 1,573 | 1 | 6.3573 | 10,000 |
| Grant Recipient Establishing COVID–19 Testing Protocol | 1,573 | 1 | 3.3333 | 5,243.3 |
| Grant Recipient Maintaining COVID–19 Testing Protocol | 1,573 | 1 | 1 | 1,573 |

*Estimated Total Annual Burden Hours:* We estimate the one-time and ongoing burden to maintain records on staff and volunteer vaccination rates and establish and maintain a written COVID–19 testing protocol will result in 95,974.8 total annual burden hours.

(Authority: IFC [86 FR 68052])

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2022–13615 Filed 6–24–22; 8:45 am]

**BILLING CODE 4184–40–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0977]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents

**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 collection of information entitled, ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents.''

**DATES:** Submit either electronic or written comments on the collection of information by August 26, 2022.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 26, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 26, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2012–N–0977 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents.'' 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:** Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *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.

**Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents—21 CFR Part 1140**

*OMB Control Number 0910–0312—Extension*

This information collection supports regulatory requirements contained in part 1140 (21 CFR part 1140) authorized under Chapter IX of the FD&C Act. Regulations in part 1140 establish permissible forms of labeling and advertising and include reporting requirements directing persons to notify FDA if they intend to use a form of advertising that is not addressed in the regulations. Section 1140.30 requires manufacturers, distributors, and retailers to: (1) observe certain format and content requirements for labeling and advertising, and (2) notify FDA if they intend to use an advertising medium that is not listed in the regulations.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 1140.30—Scope of permissible forms of labeling and advertising | 25 | 1 | 25 | 1 | 25 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden hour estimates for this collection of information were based on submissions regarding cigarette and smokeless tobacco product advertising expenditures.

FDA estimates that approximately 25 respondents will submit an annual notice of alternative advertising, and the Agency has estimated it should take 1 hour to provide such notice. Therefore, the total estimated time required for this collection of information is 25 hours. Based on a review of the information collection and the number of notifications received since 2018, we have made no adjustments to our burden estimate.

Dated: June 21, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–13630 Filed 6–24–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2022–D–0235]**

### Clinical Pharmacology Considerations for the Development of Oligonucleotide Therapeutics; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Clinical Pharmacology Considerations for the Development of Oligonucleotide Therapeutics.'' This draft guidance describes FDA's recommendations regarding clinical pharmacology considerations during the development of oligonucleotide therapeutics, including characterizing the potential for QT interval prolongation, performing immunogenicity risk assessment, characterizing the impact of hepatic and renal impairment, and assessing the potential for drug-drug interactions. The intent of this guidance is to assist industry in the conduct of these studies.

**DATES:** Submit either electronic or written comments on the draft guidance by September 26, 2022 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–2022–D–0235 for ''Clinical Pharmacology Considerations for the Development of Oligonucleotide Therapeutics.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Anuradha Ramamoorthy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3118, Silver Spring, MD 20903, *anuradha.ramamoorthy@fda.hhs.gov,* 240–402–6426.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Clinical Pharmacology Considerations for the Development of Oligonucleotide Therapeutics.'' Oligonucleotide therapeutics are an emerging therapeutic modality with increasing numbers of drugs in development. While antisense and siRNA oligonucleotide therapeutics have been approved in recent years to treat rare diseases, many oligonucleotide therapeutics are in development to treat common chronic diseases. This guidance provides recommendations to assist industry in the development of oligonucleotide therapeutics. Specifically, this guidance represents FDA's recommendations for certain pharmacokinetic and pharmacodynamic investigations including characterizing QT interval prolongation potential, performing immunogenicity risk assessment, characterizing the impact of hepatic and renal impairment, and assessing the potential for drug-drug interactions during oligonucleotide therapeutic development. This guidance provides recommendations on when these assessments may be appropriate and what types of assessments can help address these issues.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the current thinking of FDA on ''Clinical Pharmacology Considerations for the Development of Oligonucleotide Therapeutics.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 312 for investigational new drug applications and 21 CFR part 314 for new drug applications and abbreviated new drug applications have been approved under OMB control numbers 0910–0014 and 0910–0001. The collections of information for biologics license applications have been approved under OMB control number 0910–0338.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: June 21, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–13606 Filed 6–24–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2022–N–0150]**

### Revocation of Two Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Quanterix Corp. for the Simoa Semi-Quantitative SARS–CoV–2 IgG Antibody Test and for the Simoa SARS–CoV–2 N Protein Antigen Test. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

**DATES:** The Authorizations for the Simoa Semi-Quantitative SARS–CoV–2 IgG Antibody Test and for the Simoa SARS–CoV–2 N Protein Antigen Test are revoked as of May 10, 2022.

**ADDRESSES:** Submit written requests for a single copy of the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

**FOR FURTHER INFORMATION CONTACT:** Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On December 23, 2020, FDA issued an EUA to Quanterix Corp. for the Simoa Semi-Quantitative SARS–CoV–2 IgG Antibody Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021 (86 FR 21749), as required by section 564(h)(1) of the FD&C Act. On January 5, 2021, FDA issued an EUA to Quanterix Corp. for the Simoa SARS–CoV–2 N Protein Antigen Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021, as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

## II. EUA Revocation Requests

In requests received by FDA on May 5, 2022, and May 9, 2022, Quanterix Corp. requested withdrawal of, and on May 10, 2022, FDA revoked, the Authorization for the Simoa Semi-Quantitative SARS–CoV–2 IgG Antibody Test. Because Quanterix Corp. notified FDA that Quanterix Corp. did not distribute the authorized product in the United States and requested FDA to withdraw the authorization of the Simoa Semi-Quantitative SARS–CoV–2 IgG Antibody Test, FDA determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In requests received by FDA on May 5, 2022, and May 9, 2022, Quanterix Corp. requested withdrawal of, and on May 10, 2022, FDA revoked, the Authorization for the Simoa SARS–CoV–2 N Protein Antigen Test. Because Quanterix Corp. notified FDA that Quanterix Corp. has discontinued distribution of the authorized product and requested FDA withdraw the authorization of the Simoa SARS–CoV–2 N Protein Antigen Test, FDA determined that it is appropriate to protect the public health or safety to revoke this Authorization.

## III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/*.

## IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUAs of Quanterix Corp. for the Simoa Semi-Quantitative SARS–CoV–2 IgG Antibody Test and for the Simoa SARS–CoV–2 N Protein Antigen Test. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

U.S. FOOD & DRUG ADMINISTRATION

May 10, 2022

Brian Ciccariello
Quanterix Corporation
900 Middlesex Turnpike, Building One
Billerica, MA 01821

**Re: Revocation of EUA201648**

Dear Brian Ciccariello:

This letter is in response to a request from Quanterix Corporation, received May 5, 2022, and May 9, 2022, that the U.S. Food and Drug Administration (FDA) withdraw the Simoa Semi-Quantitative SARS-CoV-2 IgG Antibody Test issued on December 23, 2020, and updated April 15, 2021, and September 23, 2021. FDA understands that Quanterix Corporation did not distribute their Simoa Semi-Quantitative SARS-CoV-2 IgG Antibody Test in the US and there are no viable (non-expired) tests remaining.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Quanterix Corporation has notified FDA that Quanterix Corporation did not distribute the authorized product in the US and requested FDA to withdraw the authorization of the Simoa Semi-Quantitative SARS-CoV-2 IgG Antibody Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA201648 for the Simoa Semi-Quantitative SARS-CoV-2 IgG Antibody Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Simoa Semi-Quantitative SARS-CoV-2 IgG Antibody Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

CC: Sarah O. Kalil, SK Consulting

U.S. FOOD & DRUG ADMINISTRATION

May 10, 2022

Brian Ciccariello
Quanterix Corporation
900 Middlesex Turnpike, Building One
Billerica, MA 01821

**Re: Revocation of EUA202912**

Dear Brian Ciccariello:

This letter is in response to a request from Quanterix Corporation, received May 5, 2022, and May 9, 2022, that the U.S. Food and Drug Administration (FDA) withdraw the Simoa SARS-CoV-2 N Protein Antigen Test issued on January 5, 2021, and reissued on September 10, 2021, and December 21, 2021. FDA understands that Quanterix Corporation discontinued distribution of their Simoa SARS-CoV-2 N Protein Antigen Test and there are no viable (non-expired) tests remaining.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Quanterix Corporation has notified FDA that Quanterix Corporation has discontinued distribution of the authorized product and requested FDA withdraw the authorization of the Simoa SARS-CoV-2 N Protein Antigen Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA202912 for the Simoa SARS-CoV-2 N Protein Antigen Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Simoa SARS-CoV-2 N Protein Antigen Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

Dated: June 21, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–13639 Filed 6–24–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–N–0584]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Pilot Survey To Develop Standardized Reporting Forms for Federally Funded Public Health Projects

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, 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 July 27, 2022.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information

collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is Pilot Survey to Develop Standardized Reporting Forms for Federally Funded Public Health Projects. 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.

## Pilot Survey To Develop Standardized Reporting Forms for Federally Funded Public Health Projects

*OMB Control Number 0910–NEW*

This information collection supports federally funded public health projects administered by the Agency's Office of Regulatory Affairs (ORA). As part of FDA's efforts to protect the public health, we work collaboratively with State partners to enhance oversight of FDA-regulated products. Consistent with applicable regulations pertaining to federally funded programs, we currently collect information related to an awardee's progress in completing agreed-upon performance metrics 3 to 4 times a year during the reporting period. Respondents to the information collection are recipients of FDA-funded projects who submit required information to FDA in free text and narrative form via portable document format. To increase our efficiency in evaluating program effectiveness and return-on-investment (ROI)/return-on-value (ROV) for the federally funded projects that we administer, we intend to develop and establish the use of digital forms that contain standardized questions to capture data elements necessary to measure/track ROI/ROV. We believe the use of standardized forms will reduce the time required by awardees in completing and submitting progress reports.

As part of the pilot, respondents will complete an initial report and progress/performance reports, which include data fields to identify the award project and contact person and directs specific questions to respondents regarding project and progress updates. Based on public feedback, we hope to revise the reports, tailoring for project specificity and purpose, to include, but not limited to, improvements, such as drop-down menu selections and potential common response indicators that will reduce time for respondents and allow us to more quickly process information and determine impacts at the Agency level. As information will be requested of actively funded projects, it may become necessary to request additional information for a particular project to complete the performance evaluation(s) in a timely manner. To ensure data is sufficient, on a case-by-case basis, FDA anticipates a need for followup questionnaire(s) to supplement the progress reports as instruments of collection are developed and fine-tuned through this effort.

In the **Federal Register** of July 29, 2021 (86 FR 40853), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Awardee activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Initial Report | 400 | 1 | 400 | 10 | 4,000 |
| Updated Reports | 400 | 2 | 800 | 40 | 32,000 |
| Supplement or Followup Report (if applicable) | 100 | 1 | 100 | 10 | 1,000 |
| Total | | | | | 37,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate that 400 respondents will participate under this pilot project and will submit an average of 3 to 4 reports within a single budget year (table 1). To ensure adequate reporting will be achieved over the course of this pilot, the option for a supplement or followup report is included in the estimated reporting burden; however, the need for these reports will be determined on a case-by-case basis with the FDA project manager.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| Awardee activity | Number of recordkeepers | Records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| Records related to Initial Report | 400 | 1 | 400 | 0.5 hour (30 minutes) .. | 200 |
| Records related to Updated Reports | 400 | 2 | 800 | 0.5 hour (30 minutes) .. | 400 |
| Records related to Supplement or Followup Report (if applicable). | 100 | 1 | 100 | 0.5 hour (30 minutes) .. | 50 |
| Total | | | | | 650 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Recordkeeping activities include storing and maintaining records related to submitting a request to participate in the project and compiling reports. Respondents should use current record retention capabilities for electronic or paper storage to achieve these activities. We assume it will take 0.5 hour/year to ensure the documents related to submitting a request to participate in the program are retained properly according to their existing recordkeeping policies,

but no less than 3 years, as recommended by FDA (table 2).

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

| Awardee activity | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours |
|---|---|---|---|---|---|
| Coordination with partnering entities related to Initial Report | 300 | 2 | 600 | 8 | 4,800 |
| Coordination with partnering entities related to Updated Reports | 300 | 4 | 1,200 | 8 | 9,600 |
| Coordination with partnering entities related to Supplement or Followup Report (if applicable) | 100 | 2 | 200 | 8 | 1,600 |
| Total | | | | | 16,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

For those pilot projects that involve a participant composed of partnering entities in the program, FDA is taking into consideration the time that partnering entities will spend coordinating with each other in a pilot project. We estimate that 300 respondents will work with their respective partnering entities and the average number of partnering entities will be 2. We assume each respondent will spend 8 hours coordinating with each partnering entity on each response for this pilot. We estimate that seven respondents will need to coordinate with an average of two partnering entities to create updated reports and the final report to submit to FDA (table 3).

Dated: June 21, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–13642 Filed 6–24–22; 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), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), 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 for ULTOMIRIS (ravulizumab-cwvz), approved April 27, 2022, meets the redemption criteria.

**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:** Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, 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 for ULTOMIRIS (ravulizumab-cwvz), approved April 27, 2022, 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 *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasesPriorityVoucherProgram/default.htm.* For further information about ULTOMIRIS (ravulizumab-cwvz), approved April 27, 2022, go to the ''*Drugs@FDA*'' website at *http://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: June 21, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–13628 Filed 6–24–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Tick-Borne Disease Working Group

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** As required by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the Tick-Borne Disease Working Group (TBDWG) will hold a meeting. The meeting will be open to the public via webcast. For this meeting, the TBDWG will review the first draft of chapters for the report and further discuss plans for developing the next report to the HHS Secretary and Congress on federal tick-borne activities and research, taking into consideration the 2018 and 2020 report. The 2022 report will address a wide range of topics related to tick-borne diseases, such as, surveillance, prevention, diagnosis, diagnostics, and treatment; identify advances made in research, as well as overlap and gaps in tick-borne disease research; and provide recommendations regarding any appropriate changes or improvements to such activities and research.

**DATES:** The public can view the meeting online via webcast on July 19–20, 2022 from approximately 9:00 a.m. to 5:00 p.m. ET (times are tentative and subject to change) each day. The confirmed times and agenda items for the meeting

will be posted on the TBDWG web page at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/2022-07-19/index.html* when this information becomes available.

**FOR FURTHER INFORMATION CONTACT:** James Berger, Designated Federal Officer for the TBDWG; Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Mary E. Switzer Building, 330 C Street SW, Suite L600, Washington, DC 20024. Email: *tickbornedisease@hhs.gov*. Phone: 202–795–7608.

**SUPPLEMENTARY INFORMATION:** A link to view the webcast can be found on the meeting website at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/2022-07-19/index.html* when it becomes available. The public will have an opportunity to present their views to the TBDWG orally during the meeting's public comment session or by submitting a written public comment. Comments should be pertinent to the meeting discussion. Persons who wish to provide verbal or written public comment should review instructions at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/2022-07-19/index.html* and respond by midnight July 11, 2022 ET. Verbal comments will be limited to three minutes each to accommodate as many speakers as possible during the 30-minute session. Written public comments will be accessible to the public on the TBDWG web page prior to the meeting.

*Background and Authority:* The Tick-Borne Disease Working Group was established on August 10, 2017, in accordance with Section 2062 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to provide expertise and review federal efforts related to all tick-borne diseases, to help ensure interagency coordination and minimize overlap, and to examine research priorities. The TBDWG is required to submit a report to the HHS Secretary and Congress on their findings and any recommendations for the federal response to tick-borne disease every two years.

Dated: June 7, 2022.

**James J. Berger,**

*Designated Federal Officer, Tick-Borne Disease Working Group, Office of Infectious Disease and HIV/AIDS Policy.*

[FR Doc. 2022–13575 Filed 6–24–22; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Request for Information (RFI): HHS Initiative To Strengthen Primary Health Care

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice of Request for Information.

**SUMMARY:** U.S. Department of Health and Human Services (HHS) Office of the Assistant Secretary for Health (OASH) requests input from persons, communities, health care providers, purchasers and payers, educators, researchers, and other members of the public about what the federal government could do to strengthen primary health care in the United States. Improving access to health care, advancing health equity, and improving the health of the Nation are top priorities for the Biden-Harris Administration and HHS. Access to high-quality primary health care has been shown to improve health equity and health outcomes, and is essential for addressing key priorities, including: the COVID–19 pandemic; mental and substance use disorder prevention and care, including suicide and overdose prevention; prevention and management of chronic conditions; gender-based violence; and maternal and child health and well-being. However, our nation's primary health care foundation is weakening and in need of support: primary health care is under-resourced; the workforce is shrinking; workforce well-being is in peril; and many practices face reimbursement challenges that may result in financial instability. The HHS Initiative to Strengthen Primary Health Care (the Initiative) aims to establish a federal foundation for the provision of primary health care for all that supports improved health outcomes and advanced health equity. The first task is to develop an initial HHS plan for strengthening primary health care that will delineate specific actions that HHS agencies and offices may take to achieve the aims, within the current legislation and funding environment. In addition, the plan will include actions that establish an infrastructure in HHS to continue its focus on strengthening primary health, developing subsequent HHS plans that build on the initial plan, and monitoring progress and impact. The purpose of this RFI is to provide OASH with diverse perspectives, experiences, and knowledge that may inform the development of the initial plan for HHS, as well as future steps for the Initiative. OASH seeks information about successful approaches and innovations that improve primary health care payment, delivery models, service integration, access, workforce education, training and well-being, digital health and primary care measurement and research. OASH also seeks information about barriers to implementation of such innovations and how they could be overcome, including specific ideas for possible HHS action. OASH encourages respondents to address health equity, and is particularly interested in information from community-based settings, such as public housing, personal homes, group homes, and assisted living facilities where older adults and people with disabilities may live, and about populations traditionally underserved by current primary health care.

**DATES:** To be assured consideration, comments must be received at the email address provided below, no later than 11:59 p.m. Eastern Time (ET) on August 1, 2022. HHS will not reply individually to responders but will consider all comments submitted by the deadline.

**ADDRESSES:** Please submit all responses via email to *OASHPrimaryHealthCare@hhs.gov* as a Word document attachment or in the body of an email. Include ''Primary Health Care RFI'' in the subject line of the email.

**FOR FURTHER INFORMATION CONTACT:** For additional information, direct questions to the OASH Primary Health Care Team at *OASHPrimaryHealthCare@hhs.gov* or Sarah Boateng at (202) 401–7003.

**SUPPLEMENTARY INFORMATION:**

*Instructions:* Response to this RFI is voluntary. Each responding entity (person or organization) is requested to submit only one response. OASH welcomes responses to inform policies and actions to strengthen primary health care. Respond to one or as many prompts as you choose. Be concise with your submissions, which must not exceed four pages in 12-point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment.

OASH invites input from members of the public representing all backgrounds and perspectives. In particular, OASH is interested in input from individuals; paid and unpaid caregivers; communities; community-based organizations; health care providers (please state discipline and specialty, as appropriate); professional societies; community health centers and Rural Health Clinics; state, local, tribal, and territorial governments and public

health departments; educators; academic researchers; global partners; health insurance payers and purchasers; health technology developers; and policy experts. Examples of health care providers include, but are not limited to: family medicine, internal medicine, pediatrics, and obstetrics and gynecology physicians; physician assistants; nurse practitioners; nurse midwives; nurses; behavioral health providers; oral health providers; medical/surgical specialists; community health workers; social workers; care coordinators; telehealth navigators; peer recovery specialists; provider practices; and health care systems.

Indicate which of these stakeholder types best fits you as a respondent, if applicable. If a comment is submitted on behalf of an organization, the individual respondent's role in the organization may also be provided. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI. Comments submitted in response to this RFI may be posted on HHS websites or otherwise released publicly.

Responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

*Background:* The HHS Initiative to Strengthen Primary Health Care aims to establish a federal foundation that supports advancement toward a goal state of the practice of primary health care. In its goal state, the practice of primary health care:

- Supports health and wellness through sustained partnerships with patients, families, and their communities;
- Equitably provides first contact access to all, as well as whole person, comprehensive care over time, using interprofessional teams; and
- Coordinates and integrates care across systems, including other health care providers, public health, and community-based health promotion and social service organizations.

To achieve this goal state, actions and resources addressing financial, legislative, workforce, public health, technology and data sharing, and community-based factors are required.

The Initiative was launched in September 2021 by the Office of the Assistant Secretary of Health (OASH), under the leadership of Assistant Secretary for Health, Admiral Rachel Levine. The first task of the Initiative is to develop an initial Department of Health and Human Services (HHS) two to three year plan for strengthening primary health care that will delineate specific actions that HHS agencies and offices may take to advance toward the goal state of primary health care, defined above. In addition, the plan will include actions that establish an infrastructure in HHS to continue its focus on strengthening primary health, including developing subsequent HHS plans that build on the initial plan, and monitoring progress and impact. The recently released National Academies of Sciences, Engineering, and Medicine (NASEM) report, *Implementing High-Quality Primary Care: Rebuilding the Foundation of Health Care,*[1] which was developed in part with resources provided by HHS, will inform the development of the HHS Plan. This report organizes recommended actions using five domains: payment, access, workforce, digital health, and accountability. OASH is working with HHS agency partners and with other federal departments to develop the HHS plan. These efforts will also be informed by feedback from external stakeholders and subject matter experts, including patients, families, providers, researchers, and communities, to learn about innovative approaches, needs and challenges, to inform the HHS plan. This RFI will ensure that OASH has obtained broad input, and will inform the initial HHS plan and subsequent plans.

*Scope and terminology:* OASH invites input from all interested members of the public as outlined in the instructions. OASH encourages input from traditionally underserved populations. Definitions are provided for four of the key concepts of the goal state of primary health care (see above) that may have variable interpretations.

- Whole person care: Whole person care requires an understanding of the physical, mental, emotional, and spiritual health and wellness goals of the individual/family served and the context in which they live and work, and is facilitated by goal-oriented care plans developed with the patient and primary health care team through shared decision making.
- Integrated care: Integrated care expands the health team by bringing primary health care together with behavioral health (mental health and substance use disorder services), oral health, public health, and social and other services and partnerships to optimize access, coordination of care, and health outcomes.
- Interprofessional teams: Integrated care requires the expertise of interprofessional teams and their coordination of care. Interprofessional team composition is not predetermined or fixed, instead personalized to meet the needs of the individual and family served.
- Community participation, self-reliance, and resilience: Primary health care practices can support communities' capacities to achieve self-reliance and resilience by working as a member of the community to strengthen the health and wellness of individuals, families, and the communities in which they live.

*Information Requested:* Respondents may provide information for one or as many topics below as they choose. OASH welcomes information about innovations, models, solutions to barriers, and possible HHS actions that may strengthen primary health care to promote health equity, reduce health disparities, improve health care access, and improve health outcomes. Strengthening primary health care requires the coordination of many partners. Recommendations for collaboration across HHS and between HHS and other federal departments are welcome.

*1. Successful models or innovations that help achieve the goal state for primary health care, defined above:* Describe models or example innovations that are advancing the health of individuals and communities through strengthened primary health care, summarize evidence demonstrating impact, and provide resources, as appropriate. OASH is interested in action steps that will produce sustainable change, in addition to pilot programs. Share implementation approaches and lessons learned. Your response may address but need not be limited to: examples of new payment models; actions that support the integration of primary health care with other elements of the health care systems (*e.g.,* specialty care including behavioral health care, oral health, hospitals, health systems); actions that support integration of primary health care with prevention specialists (*e.g.,* Drug-Free Communities Coalitions, Community Health Workers, Peer Support Specialists) in work to reduce risk factors and increase protective factors associated with substance use and mental conditions; primary health

[1] National Academies of Sciences, Engineering, and Medicine. 2021. Implementing High-Quality Primary Care: Rebuilding the Foundation of Health Care. Washington, DC: The National Academies Press.

care integration with other clinical services and public health; primary health care integration with community-based organizations to provide social services to patients; interprofessional education strategies; expanded and effective use of health information technology (IT); strategies to expand primary health care research and its impact; and measures of primary health care spending, access, quality, and impact.

*2. Barriers to implementing successful models or innovations:* Describe current barriers to implementing innovations or improvements that would strengthen primary health care, to improve the health of individuals, families and communities. Also, consider barriers to advancing primary health care research, as well as barriers to inclusive services and those targeting youth. For each barrier, you may provide evidence-based or proposed solutions.

*3. Successful strategies to engage communities:* Describe models, approaches or frameworks that HHS could use to obtain ongoing input from individuals, caregivers, and communities on HHS actions to strengthen primary health care and their implementation (*i.e.,* community engagement strategies), acknowledging the different approaches necessary to obtain perspectives from youth and adults. Populations of focus are those traditionally underserved by health care, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Additional populations of interest are people experiencing homelessness; non-US-born persons; individuals experiencing gender-based violence; individuals with chronic illness; older adults and people with disabilities; individuals with mental and substance use disorders; and people who have had interactions with the criminal justice system. Share implementation approaches for community engagement strategies and lessons learned.

*4. Proposed HHS actions:* Identify specific actions that HHS may take to advance the health of individuals, families, and communities through strengthened primary health care. Examples include, but are not limited to: steps to implement and scale new payment models and reimbursement approaches, including revising the Physician Fee Schedule, Relative Value Units, and Current Procedural Terminology codes and advancing value-based care; increasing payer and national investment in primary health care and measuring/monitoring spending on primary care; support for service integration, including integration of primary health care and public health; and enabling care for complex needs by integrating behavioral, oral, and primary health care and integrating access to social services and primary health care through partnerships; support for primary health care workforce well-being; policy and programmatic proposals for health workforce programs to address workforce shortages, geographic maldistribution and to improve workforce diversity; support for primary health care workforce education and training; interprofessional education; new technical assistance needed; advancing the use of certified health IT and interoperability of electronic health information across the care continuum; primary health care research infrastructure and investment; and measurement and stewardship of primary health care. Specify what barrier the opportunity addresses, and the realistic timing for implementation: less than two years, two to five years, and six to 10 years.

Dated: June 15, 2022.

**Judith Steinberg,**

*Senior Advisor, Office of the Assistant Secretary for Health, Department of Health and Human Services.*

[FR Doc. 2022–13632 Filed 6–24–22; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel; NEI Pathway to Independence Award Application (K99).

*Date:* July 26, 2022.

*Time:* 10:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Eye Institute, National Institutes of Health, 6000B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6000B Rockledge Drive, Suite 3400, Bethesda, MD 20892, (240) 451–2020, *jennifer.schiltz@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 22, 2022.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–13640 Filed 6–24–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel; NEI Mentored Clinician Scientist Grant Applications (K08, K23) and Conference Grants (R13).

*Date:* July 19, 2022.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Brian Hoshaw, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700B

Rockledge Drive, Suite 3400, Rockville, MD 20892, (301) 451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 22, 2022.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–13641 Filed 6–24–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV Vaccine Research and Design (HIVRAD) Program (P01 Clinical Trial Not Allowed).

*Date:* July 21, 2022.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Kristina S. Wickham, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20852, 301–761–5390, *kristina.wickham@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 21, 2022.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–13608 Filed 6–24–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5654–N–04]**

### Section 8 Housing Assistance Programs Management and Occupancy Review Schedule

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

**ACTION:** Notice.

**SUMMARY:** Through this Notice, the Federal Housing Administration (FHA) establishes the Management and Occupancy Review (MOR) schedule for projects assisted under each of seven project-based Section 8 programs administered by the Office of Multifamily Housing Programs. The MOR schedule establishes a frequency for the completion of MORs based upon a project's previous MOR score and the project's rating under HUD's risk-based asset management model. This Notice follows the January 14, 2015, publication of a proposed MOR schedule, on which HUD sought public comments. It adopts a final schedule that reflects changes made in response to such comments.

**DATES:** The MOR schedule is effective September 26, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Lavorel, Director, Program Administration Office, Office of Multifamily Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–7000; telephone number 202–402–2515 (this is not a toll-free number). Hearing- and speech-impaired persons may access this numbers through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

On January 14, 2015, HUD published the ''Section 8 Housing Assistance Programs Proposed Management and Occupancy Review Schedule'' (MOR Notice) (80 FR 1930) to solicit public comments on HUD's proposed MOR schedule. The proposed MOR schedule was published concurrently with a Proposed Rule (80 FR 1860) that sought to amend HUD's regulations governing seven project-based Section 8 Housing Assistance Payment (HAP) programs administered by the Office of Multifamily Housing Programs to provide for consistency across the programs with respect to the frequency of MORs and to authorize HUD to establish by **Federal Register** Notice, subject to public comment, an MOR schedule based on a project's annual MOR score and its rating under HUD's risk-based management model.

The seven programs addressed in the Proposed Rule and subject to the MOR schedule are the HAP program for New Construction (24 CFR part 880) and the HAP program for Substantial Rehabilitation (24 CFR part 881), which provide rental assistance in connection with the development of newly constructed or substantially rehabilitated privately owned rental housing; the HAP Program for State Housing Agencies (24 CFR part 883), which applies to newly constructed or substantially rehabilitated housing financed by state agencies; the HAP program for New Construction financed under Section 515 of the Housing Act of 1949 (24 CFR part 884), which applies to U.S. Department of Agriculture rural rental housing projects; the Loan Management Set Aside Program (24 CFR part 886, subpart A), which provides rental subsidies to HUD-insured or HUD-held multifamily properties experiencing immediate or potential financial difficulties; the HAP for the Disposition of HUD-Owned Projects (24 CFR part 886, subpart C), which provides Section 8 assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-held mortgages on rental housing projects; and the Section 202/8 Program (24 CFR part 891, subpart E), which provides assistance for housing projects serving the elderly or households headed by persons with disabilities.

HUD's risk-based asset management model incorporates both qualitative and quantitative elements into a comprehensive property-level rating. This rating translates to a classification (hereafter referred to as a ''risk-based classification'') of ''Troubled,'' ''Potentially Troubled,'' or ''Not Troubled.''

Elsewhere in this issue of the **Federal Register**, HUD publishes a Final Rule that adopts with no substantive changes the portions of the Proposed Rule that provide for consistency across the seven above-described programs with respect to the frequency of MORs. As required pursuant to this Final Rule, HUD sets forth by publication of this **Federal Register** Notice an MOR schedule for

projects assisted under such programs, taking into account public comments received on the proposed MOR schedule.

## II. Proposed MOR Schedule

The proposed schedule was as follows:

(1) A project with a ''Below Average'' or ''Unsatisfactory'' score on the previous MOR and a risk classification of ''Troubled,'' ''Potentially Troubled,'' or ''Not Troubled'' would have an MOR within 12 months of the previous MOR conducted at the project;

(2) A project with a ''Satisfactory'' score on the previous MOR and a risk classification of ''Troubled'' or ''Potentially Troubled'' would have an MOR within 24 months of the previous MOR conducted at the project. Additionally, a project with an ''Above Average'' or ''Superior'' score on the previous MOR and a risk classification of ''Troubled'' would have an MOR within 24 months of the previous MOR conducted at the project; and

(3) A project with a ''Satisfactory'' score on the previous MOR and a risk classification of ''Not Troubled'' would have an MOR within 36 months of the previous MOR conducted at the project. Additionally, a project with an ''Above Average'' or ''Superior'' score on the previous MOR and a risk classification of ''Potentially Troubled'' or ''Not Troubled'' would have an MOR within 36 months of the previous MOR conducted at the project.

HUD received 23 public comments on the Proposed Rule and 16 public comments on the proposed MOR schedule from management associations, public housing authorities, homebuilders' associations, residents of public housing, and other interested parties. Given the overlap between the public comments received on the Proposed Rule and the proposed MOR schedule, HUD provides a detailed discussion of all significant comments in the preamble to the Final Rule.

## III. Final Notice

HUD has made changes to the final MOR schedule based on comments on the proposed MOR schedule. As of the effective date of this Notice, the MOR schedule for projects assisted under the seven project-based Section 8 programs administered by the Office of Multifamily Housing Programs is as follows:

(1) A project must have an MOR within 12 months of its previous MOR if—

(a) it has a risk classification of ''Troubled'' or ''Potentially Troubled'' without regard to its MOR score, or;

(b) it has a risk classification of ''Not Troubled'' and an MOR score of ''Unsatisfactory'' or ''Below Average.''

(2) A project must have an MOR within 24 months of its previous MOR if it has a risk classification of ''Not Troubled'' and an MOR score of ''Satisfactory.''

(3) A project must have an MOR within 36 months of its previous MOR if it has a risk classification of ''Not Troubled'' and a previous MOR score of ''Above Average'' or ''Superior.''

The schedule is summarized in the table below.

| Previous MOR | Unsatisfactory | Below average | Satisfactory | Above average | Superior |
|---|---|---|---|---|---|
| **Next MOR must be conducted within . . .** | | | | | |
| Risk Classification: Troubled | 12 months of previous MOR. | 12 months of previous MOR. | 12 months of previous MOR. | 12 months of previous MOR. | 12 months of previous MOR. |
| Risk Classification: Potentially Troubled. | 12 months of previous MOR. | 12 months of previous MOR. | 12 months of previous MOR. | 12 months of previous MOR. | 12 months of previous MOR. |
| Risk Classification: Not Troubled | 12 months of previous MOR. | 12 months of previous MOR. | 24 months of previous MOR. | 36 months of previous MOR. | 36 months of previous MOR. |

Either HUD or the respective contract administrator (CA) may conduct an MOR outside of this schedule as warranted based on project-level circumstances (for example, if a project's risk profile has worsened; note HUD requires an MOR within 6 months of a change in ownership or management irrespective of a project's performance-based MOR schedule). All scheduling of MORs is subject to the availability of appropriations for CA services, constraints on HUD staffing, the status of government operations, and whether a disaster declaration is in effect for the area in which a property is located. For any property with a previous MOR score of ''Satisfactory'' or better, HUD may opt to defer scheduling for up to 90 days from the date established pursuant to this schedule in order to balance workload. Deferred scheduling may be approved by CAs or vendors under HAP support services contracts only with prior approval from HUD.

HUD suggests that owners provide copies of completed MORs to tenant organizations upon request, after redacting any personally identifiable information.

## IV. Findings and Certifications

*Paperwork Reduction Act*

The information collection requirements for this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0178. The Department is amending the collection requirement to reflect this Notice's reduced burden. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

*Environmental Review*

This Notice provides operating instructions and procedures in connection with activities under provisions of Section 8 project-based assistance program regulations that have been the subject of a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

**Julia R. Gordon,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2022–13425 Filed 6–24–22; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLHQ210000.223.L16100000.PN0000; OMB Control Number 1004–0212]**

### Agency Information Collection Activities; Resource Management Planning

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before August 26, 2022.

**ADDRESSES:** Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov*. Please reference Office of Management and Budget (OMB) Control Number 1004–0212 in the subject line of your comments. The electronic submission of comments is recommended.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Antoinette Eighmey-Griffin by telephone at (303) 239–3619 or by email at *aeighmeygriffin@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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* This OMB Control Number provides State Governors an opportunity to work with the BLM to resolve possible inconsistencies between BLM land use plans and State or local plans, policies, or programs; and authorizes protests of land use plans and plan amendments by the BLM. This OMB Control Number is currently scheduled to expire on March 31, 2023. The BLM plans to request that OMB renew this OMB Control Number for an additional three years.

*Title of Collection:* Resource Management Planning.

*OMB Control Number:* 1004–0212.

*Form Numbers:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* State, Local, and Tribal governments; individuals/households; businesses; and associations.

*Total Estimated Number of Annual Respondents:* 131.

*Total Estimated Number of Annual Responses:* 131.

*Estimated Completion Time per Response:* 15 hours.

*Total Estimated Number of Annual Burden Hours:* 1,965.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* $0.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Darrin A. King,**

*Information Collection Clearance Officer.*

[FR Doc. 2022–13651 Filed 6–24–22; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[223.LLHQ220000.L10200000.PK0000; OMB Control No. 1004–0019]**

### Agency Information Collection Activities; Grazing Management: Range Improvement Agreements and Permits Materials

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before August 26, 2022.

**ADDRESSES:** Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov*. Please reference Office of Management and Budget (OMB) Control Number 1004–0019 in

the subject line of your comments. The electronic submission of comments is recommended.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Brian Thrift by email at *bthrift@blm.gov,* or by telephone at (208) 373–3869. 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The BLM collects the information authorized under OMB Control Number 1004–0019 to approve and manage range improvements on the public lands. This OMB Control Number is currently scheduled to expire on March 31, 2023. The BLM plans to request that OMB renew this OMB Control Number of an additional three years.

*Title of Collection:* Grazing Management: Range Improvements Agreements and Permits (43 CFR Subpart 4120).

*OMB Control Number:* 1004–0019.

*Form Numbers:* 4120–6, Cooperative Range Improvement Agreement; and 4120–7, Range Improvement Permit.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Holders of BLM grazing permits or grazing leases; affected individuals and households; and affected tribal, state and county agencies.

*Total Estimated Number of Annual Respondents:* 1,110.

*Total Estimated Number of Annual Responses:* 1,110.

*Estimated Completion Time per Response:* Varies from 1 to 2 hours per response.

*Total Estimated Number of Annual Burden Hours:* 1,640.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* $0.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Darrin A. King,**

*Information Collection Clearance Officer.*

[FR Doc. 2022–13653 Filed 6–24–22; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0034103; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Intent To Repatriate Cultural Items: University of Denver Museum of Anthropology, Denver, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The University of Denver Museum of Anthropology, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects and sacred objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the University of Denver Museum of Anthropology. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the University of Denver Museum of Anthropology at the address in this notice by July 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Sturm Hall 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the University of Denver Museum of Anthropology, Denver, CO, that meet the definition of unassociated funerary objects and sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National

Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

At an unknown date, 37 cultural items were removed from unknown sites in unknown counties in WY. At an unknown date, the cultural items came into the possession of Theodore Sowers. Mr. Sowers was a graduate of the University of Denver and, in 1995, his daughters donated the cultural items to the University of Denver. The 37 unassociated funerary objects are one arrow shaft (DU ID# 1995.1.25), nine awls (DU ID#s 1995.1.16, 1995.1.34–37 and 1995.1.39–42), two dress adornments (DU ID#s 1995.1.23–24), two earrings (DU ID#s 1995.1.21–22), two gorgets (DU ID#s 1995.1.38 and 1995.1.49), one worked horn (DU ID# 1995.1.17), one finger knife (DU ID# 1995.1.26), one mirror (DU ID#1995.1.51), three projectile points (DU ID#s 1995.1.27–28 and 1995.1.33), three scrapers (DU ID#s 1995.1.30–32), one Sun Dance brooch (DU ID# 1995.1.50), six tools (DU ID#s 1995.1.19–20, 1995.1.29, 1995.1.43, 1995.1.45 and 1995.1.52), one hair decoration (DU ID# 1995.1.46), three whistles (DU ID#s 1995.1.44, 1995.1.47–48), and one piece of worked wood (DU ID# 1995.1.18).

At an unknown date, one cultural item was removed from an unknown site in WY. At an unknown date, the cultural item came into the possession of Theodore Sowers. Mr. Sowers was a graduate of the University of Denver and, in 1995, his daughters donated the cultural item to the University of Denver. The one sacred object is a steatite pipe bowl (DU ID# 4155).

The Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (*previously* listed as Shoshone Tribe of the Wind River Reservation, Wyoming), have been living on the Wind River Mountain range and its environs for some 12,000 years. Museum records indicate that the 37 cultural items were removed from a burial. During consultation in March of 2019, Eastern Shoshone Tribal Historic Preservation Office (THPO) staff and a Cultural/Spiritual Representative demonstrated that the one cultural item is a sacred object. They also demonstrated that all these items are culturally affiliated with the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (*previously* listed as Shoshone Tribe of the Wind River Reservation, Wyoming).

**Determinations Made by the University of Denver Museum of Anthropology**

Officials of the University of Denver Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 37 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and sacred object and the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (*previously* listed as Shoshone Tribe of the Wind River Reservation, Wyoming).

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Sturm 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu,* by July 27, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects and sacred object to the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (*previously* listed as Shoshone Tribe of the Wind River Reservation, Wyoming) may proceed.

The University of Denver Museum of Anthropology is responsible for notifying the Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (*previously* listed as Shoshone Tribe of the Wind River Reservation, Wyoming) that this notice has been published.

Dated: June 10, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–13620 Filed 6–24–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0034104; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The Field Museum of Natural History has corrected an inventory of human remains, published in a Notice of Inventory Completion in the **Federal Register** on February 2, 2005. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Field Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Field Museum of Natural History at the address in this notice by July 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Field Museum of Natural History, Chicago, IL. The human remains were removed from the Crow Reservation, Bighorn County, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (70 FR 5466, February 2, 2005). Following a re-inventory of the human remains from the site in question, the Field Museum of Natural History determined that the minimum number of individuals should be increased by one. Transfer of control of the items in this correction notice has not occurred.

**Correction**

In the **Federal Register** (70 FR 5466, February 2, 2005), column 1, paragraph 4, sentence 1 is corrected by substituting the following sentence:

During 1901–1902, human remains representing a minimum of three individuals were obtained from Crow Agency, on the Crow Reservation, Bighorn County, MT, by Stephen C. Simms for the Field Museum of Natural History.

In the **Federal Register** (70 FR 5466, February 2, 2005), column 1, paragraph 6, sentence 1 is corrected by substituting the following sentence:

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 S Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org,* by July 27, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Crow Tribe of Montana may proceed.

The Field Museum of Natural History is responsible for notifying the Crow Tribe of Montana that this notice has been published.

Dated: June 10, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–13621 Filed 6–24–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0034107; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: The Nelson Gallery Foundation DBA The Nelson-Atkins Museum of Art, Kansas City, MO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Nelson Gallery Foundation, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to The Nelson Gallery Foundation. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to The Nelson Gallery Foundation at the address in this notice by July 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Byers, Assistant to the Deputy Director of Curatorial Affairs, The Nelson-Atkins Museum of Art, 4525 Oak Street, Kansas City, MO 64111, telephone (816) 751–1320, email *jbyers@nelson-atkins.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of The Nelson Gallery Foundation, Kansas City, MO, that meets the definition of an object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Item**

On December 12, 1931, The Nelson-Atkins Museum of Art purchased a cultural item from the Museum of the American Indian, Heye Foundation, in New York, NY, and accessioned it on January 1, 1931. The object of cultural patrimony is one woven bag.

Bags of this kind represent an ancient tradition of weaving by the Osage women. Until trade yarn was adopted by Osage weavers following European contact, such bags were woven using buffalo hair. This woven bag was consecrated and made *waxobe* (sacred) during ceremonies conducted by Osage clan priests. It was an intrinsic part of the *Ga-hi'-ge O-k'on* (Rite of the Chiefs) ceremony, where it symbolized a woman's vocation.

**Determinations Made by The Nelson Gallery Foundation**

Officials of The Nelson Gallery Foundation have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and The Osage Nation (*previously* listed as Osage Tribe).

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Jennifer Byers, Assistant to the Deputy Director of Curatorial Affairs, The Nelson-Atkins Museum of Art, 4525 Oak Street, Kansas City, MO 64111, telephone (816) 751–1320, email *jbyers@nelson-atkins.org,* by July 27, 2022. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to The Osage Nation (*previously* listed as Osage Tribe) may proceed.

The Nelson Gallery Foundation is responsible for notifying The Osage Nation (*previously* listed as Osage Tribe) that this notice has been published.

Dated: June 13, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–13623 Filed 6–24–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0034102; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The American Museum of Natural History, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the American Museum of Natural History. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the American Museum of Natural History at the address in this notice by July 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the American Museum of Natural History, New York, NY, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

#### History and Description of the Cultural Items

In 1912, ethnologist Alanson B. Skinner purchased an insignia of peace officer and a peace pipe from John Keshena during a museum expedition in Wisconsin. The American Museum of Natural History accessioned the two items that same year. The insignia of peace officer is over two feet long and consists of thirty-one circular German silver ornaments and one heart-shaped silver ornament on harness leather embellished with small sections of fur and strips of red and orange cloth. At the bottom of the insignia are four metal bell stick pin ornaments inscribed with ''Dr. Bell's Pine Tar Honey Cures Coughs,'' remnants from an old respiratory cure-all manufactured by the E.E. Southerland Medicine Company in Paducah, Kentucky circa 1894. The peace pipe consists of two parts, including a red painted stone bowl (possibly made of catlinite) with tobacco and paper remnants attached to a wooden stem that is more than two feet long and coated in red pigment.

Ms. Kate Keshena contacted the American Museum of Natural History and provided genealogical records indicating that she descends from Chief Keshena, a 19th century Menominee leader, who was the last peace-keeping chief of the Menominee Indian Tribe of Wisconsin. Chief Keshena was the last known chief to have used the insignia and pipe. Skinner purchased the two items from John Keshena, Chief Keshena's son.

#### Determinations Made by the American Museum of Natural History

Officials of the American Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 43 CFR 10.14(b), Ms. Kate Keshena is a lineal descendant of Chief Keshena based on genealogical records.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org,* by July 27, 2022. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to Ms. Kate Keshena may proceed.

The American Museum of Natural History is responsible for notifying Ms. Kate Keshena that this notice has been published.

Dated: June 10, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–13618 Filed 6–24–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0034105; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Anthropological Studies Center (ASC), Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA, and in Control of the California Department of Transportation (CALTRANS); Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The California Department of Transportation (CALTRANS) has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on November 13, 2000. This notice corrects the cultural affiliation of the human remains and associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to CALTRANS. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to CALTRANS at the address in this notice by July 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Todd Jaffke, Senior Environmental Planner, California Department of Transportation, P.O. Box 94623 (M.S.8), Oakland, CA 94623–0660; telephone (510) 960–5025, email *todd.jaffke@dot.ca.gov*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the California Department of Transportation, Oakland, CA. The human remains and associated funerary objects were removed from the Suscol Site (CA–NAP–15/H) in Napa County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (65 FR 67756–67757, November 13, 2000). This correction is being made after officials at CALTRANS identified additional culturally affiliated Indian Tribes. Also, the name of the culturally affiliated Indian Tribe listed in the previous notice is corrected. Transfer of control of the items in this correction notice has not occurred.

### Correction

In the **Federal Register** (65 FR 67757, November 13, 2000), column 2, paragraph 1, sentence 3 is corrected by substituting the following sentence:

Officials of the California Department of Transportation have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Band of Wintun Indians (*previously* listed as Cortina Indian Rancheria); and the Yocha Dehe Wintun Nation, California (*previously* listed as Rumsey Indian Rancheria of Wintun Indians of California) (hereafter referred to as The Tribes).

### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Todd Jaffke, Senior Environmental Planner, California Department of Transportation, P.O. Box 94623 (M.S.8), Oakland, CA 94623–0660, telephone (510) 960–5025, email *todd.jaffke@dot.ca.gov,* by July 27, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The California Department of Transportation is responsible for notifying The Tribes that this notice has been published.

Dated: June 10, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–13622 Filed 6–24–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0034106; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: American Numismatic Society, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The American Numismatic Society (the ''Museum''), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an unassociated funerary object and an object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Museum at the address in this notice by July 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gilles Bransbourg, Executive Director, American Numismatic Society, 75 Varick Street, 11th Floor, New York, NY 10013, telephone (212) 571–4470, email *gbransbourg@numismatics.org.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the American Numismatic Society, New York, NY, that meets the definition of an unassociated funerary object and an object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

### History and Description of the Cultural Item

In or around 1912, one cultural item was removed from a Pawnee burial site in Nance County, NE. In 1913, the item was published by A.G. Parker in *The Numismatist* (vol. 26, p. 132), who wrote that it was ''recently found at Genoa, Neb., by John Vaught, a man employed by the village of Genoa to repair the water works reservoir. . . . The hill referred to was at one time used as a burying ground by the Pawnee Indians. . . .'' In 1915, William Poillon, Edward T. Newell, and Thomas L. Elder donated the item to the Museum.

The one unassociated funerary object and object of cultural patrimony is a silver medal issued by the United States Mint with a right-side profile image of Abraham Lincoln, with the following text on the obverse: ''ABRAHAM LINCOLN, PRESIDENT OF THE UNITED STATES 1862.'' On the reverse is a central vignette of a rural scene, encircled by a scalping scene flanked by a quiver of arrows, a bow, a tomahawk, and the head of a woman.

By letter dated January 4, 2022, the Museum informed the Pawnee Nation of Oklahoma (the ''Pawnee Nation'') of the discovery of this item in the Museum's collection and its apparent affiliation with the Pawnee Nation. On February 2, 2022, the Museum met with the President of the Pawnee Nation to discuss the item.

By letter dated February 8, 2022, the Pawnee Nation requested repatriation of the item as an unassociated funerary object and/or as an object of cultural

patrimony, emblematic of the military and diplomatic history of the Pawnee Nation in the nineteenth century and in particular during the Indian Wars on the Great Plains, when the Pawnee Nation was a military ally of the United States.

**Determinations Made by the American Numismatic Society**

Officials of the American Numismatic Society have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near the human remains of a Native American at the time of death or later as part of the death rite or ceremony of the Pawnee Nation of Oklahoma and is believed, by a preponderance of the evidence, to have been removed from the burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has an ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and object of cultural patrimony and the Pawnee Nation of Oklahoma.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Dr. Gilles Bransbourg, Executive Director, American Numismatic Society, 75 Varick Street, 11th Floor, New York, NY 10013, telephone (212) 571–4470, email *gbransbourg@numismatics.org,* by July 27, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object and object of cultural patrimony to the Pawnee Nation of Oklahoma may proceed.

The American Numismatic Society is responsible for notifying the Pawnee Nation of Oklahoma that this notice has been published.

Dated: June 10, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–13619 Filed 6–24–22; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1320]**

### Certain Universal Golf Club Shaft and Golf Club Head Connection Adaptors, Certain Components Thereof, and Products Containing the Same; Notice of Institution of Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 19, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Club-Conex, LLC of Scottsdale, Arizona. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain universal golf club shaft and golf club head connection adaptors, certain components thereof, and products containing the same by reason of the infringement of certain claims of U.S. Patent No. 7,857,709 (''the '709 patent'') and U.S. Patent No. 8,562,454 (''the '454 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**SUPPLEMENTARY INFORMATION:**

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on June 21, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–5 and 8–14 of the '709 patent and claims 1–16 of the '454 patent, whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''golf club connection adaptors, which are used to quickly and easily, but reversibly, assemble a golf club shaft with a golf club head in a secure fashion, components thereof, such as shaft adapters, hosel adapters, and compression nuts, and products containing the same'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Club-Conex, LLC, 7327 E Tierra Buena Lane, Scottsdale, AZ 85260.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Top Golf Equipment Co. Limited, #2021 Renmin Road, Longhua District, Shenzhen GuangDong, China 518131.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as

amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 21, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–13609 Filed 6–24–22; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1241]**

## Certain Electrical Connectors and Cages, Components Thereof, and Products Containing the Same; Commission Determination To Review in Part a Final Initial Determination; Request for Written Submissions on Certain Issues Under Review and on Remedy, the Public Interest, and Bonding; Extension of the Target Date

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ''). The Commission requests written submissions from the parties on certain issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission also extends the target date to September 8, 2022.

**FOR FURTHER INFORMATION CONTACT:** Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On January 26, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by Amphenol Corp. of Wallingford, Connecticut (''Amphenol,'' or ''Complainant''). 86 FR 7104–05 (Jan. 26, 2021). The complaint alleged a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of electrical connectors and cages, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,371,117 (''the '117 patent''); 8,371,875 (''the '875 patent''); 8,864,521 (''the '521 Patent''); 9,705,255 (''the '255 patent''); and 10,381,767 (''the '767 patent''). The complaint also alleged the existence of a domestic industry. The notice of investigation named as respondents: Luxshare Precision Industry Co., Ltd. and Dongguan Luxshare Precision Industry Co. Ltd., both of Dongguan City, China; Luxshare Precision Limited (HK) of Fotan, Hong Kong; and Luxshare-ICT Inc. of Milpitas, California (collectively, ''Luxshare,'' or ''Respondents''). *Id.* at 7104. The Commission's Office of Unfair Import Investigations is not named as a party in this investigation. *Id.*

Subsequently, the ALJ granted Complainant's motion for partial termination of the investigation by withdrawal of the '875 and the '521 patents, and claims 2, 14, 17–19, and 25–27 of the '117 patent; claims 1–3, 5–8, and 18 of the '255 patent; and claims 2–3, 7, 14, 20–22, 30, and 32 of the '767 patent. *See* Order No. 29 (Oct. 13, 2021), *unreviewed by* Comm'n Notice (Nov. 3, 2021). The ALJ also granted in part and denied in part Complainant's motion for summary determination that it has satisfied the importation requirement. *See* Order No. 34 (Oct. 28, 2021), *unreviewed by* Comm'n Notice (Nov. 29, 2021). The ALJ also granted in part Luxshare's motion for summary determination that the importation requirement has not been met for certain products. *See* Order No. 35. On November 29, 2021, the Commission determined to review that determination. Comm'n Notice (Nov. 29, 2021).

On March 11, 2022, the ALJ issued the final ID. On March 25, 2022, Complainant petitioned for review of the final ID. On April 4, 2022, Respondents filed a response.

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ and the Commission, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID's findings on (1) importation, including any findings impacted by the determination on importation; (2) the Redesigned Products; (3) infringement for claim 9 of the '117 patent; (4) the construction of the term ''contact tail adapted for attachment to the printed circuit board that is perpendicular to the . . . printed circuit board'' of the '767 patent; (5) infringement analysis for claims 1, 4–6, 9–13, 15–17, 19, and 23 of the '767 patent; (6) the technical prong findings for the '767 patent; (7) obviousness for the '767 patent; and (8) the economic prong of domestic industry analysis.

In connection with its review, the Commission requests responses to the following question. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

(1) Please address whether Complainant waived the argument that the QSFP 2x1 SMT products are representative of the QSFP 2x1 Press-fit products. Please include citations to the record before the ALJ.

The parties are invited to brief only the discrete question identified above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale

of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties to the investigation are requested to file written submissions in response to the briefing question identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and is requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on July 6, 2022. Reply submissions must be filed no later than the close of business on July 14, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 25 pages. Reply submissions are limited to 20 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1241) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission has also determined to extend the target date for completion of the investigation to September 8, 2022.

The Commission vote for this determination took place on June 21, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 21, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–13610 Filed 6–24–22; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB 1140–0011]**

### Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application to Make and Register a Firearm—ATF Form 1 (5320.1)

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) OMB 1140–0011 (Application to Make and Register a Firearm—ATF Form 1 (5320.1)) is being revised to include formatting changes, additional definitions, and an update to the instructions. The proposed IC is also

being published to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 26, 2022.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Connor Brandt, National Firearms Act Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *nfaombcomments@atf.gov,* or by telephone at 304–616–3175.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection* (check justification or form 83): Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Application to Make and Register a Firearm.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number (if applicable):* ATF Form 1 (5320.1).

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Individuals or households, Business or other for-profit, Federal Government, State, Local, or Tribal Government.

*Other (if applicable):* Not for-profit and Farms.

*Abstract:* The Application to Make and Register a Firearm—ATF Form 1 (5320.1) must be completed by any person, other than a qualified manufacturer, who wishes to make and register a National Firearms Act (NFA) firearm. For any person other than a government agency, the making incurs a tax of $200.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 25,716 respondents will respond to this collection once annually, and it will take each respondent approximately 3.99783 hours to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 102,808 hours, which is equal to 25,716 (total respondents) * 1 (# of response per respondent) * 3.99783 hours (239.9 minutes or the time taken to prepare each response).

*If additional information is required contact:* Robert Houser, Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, United States Department of Justice, Justice Management Division, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: June 21, 2022.

**Robert Houser,**

*Assistant Director, Policy and Planning Staff, U.S. Department of Justice.*

[FR Doc. 2022–13596 Filed 6–24–22; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB 1140–0006]**

### Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application and Permit for Importation of Firearms, Ammunition and Defense Articles—ATF Form 6—Part II (5330.3B)

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0036 (Application and Permit for Importation of Firearms, Ammunition and Defense Articles—ATF Form 6—Part II (5330.3B)) is being revised to include a Continuation Sheet, so that additional firearms can be listed on the same permit application. The proposed information collection is also being published to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 26, 2022.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Corey Bodencak, Office 1350/Imports Branch/FESD, by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Corey.Bodencak@atf.gov,* or by telephone at 304–616–4558.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection (check justification or form 83):* Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition and Defense Articles.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number (if applicable):* ATF Form 6—Part II (5330.3B).

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for-profit.

*Other (if applicable):* Individuals or households.

*Abstract:* The information collected on the Application and Permit for Importation of Firearms, Ammunition and Defense Articles—ATF Form 6—Part II (5330.3B) is used to determine if the article(s) described in the application qualifies for importation by the importer, and also serves as authorization for the importer.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 400 respondents will respond to this collection once annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 200 hours, which is equal to 400 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes or the time taken to prepare each response).

*If additional information is required contact:* Robert Houser, Assistant Director, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

**Robert Houser,**

*Assistant Director, Policy and Planning Staff, U.S. Department of Justice.*

[FR Doc. 2022–13604 Filed 6–24–22; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Julie Halling, M.D.; Decision and Order

On November 4, 2021, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (OSC) to Julie Halling, M.D. (hereinafter, Registrant). OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration, No. BH6450174, at the registered address of 5102 Galley Road, Lot 304C, Colorado Springs, Colorado. The OSC alleged that Registrant's registration should be revoked because Registrant is without ''authority to handle controlled substances in the state in which [Registrant is] registered with the DEA.'' *Id.* (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in a Request for Final Agency Action (RFAA) on May 16, 2022.[1]

**Findings of Fact**

On February 29, 2021, the Colorado Medical Board issued a Final Board Order that revoked Registrant's license to practice medicine in the State of Colorado. RFAA Exhibit 2, App.1 (Final Board Order). According to Colorado's online records, of which the Agency takes official notice, Registrant's license is still revoked.[2] Colorado Professional or Business License Lookup, *https://apps.colorado.gov/dora/licensing/Lookup/LicenseLookup.aspx* (last visited date of signature of this Order).

Accordingly, the Agency finds that Registrant currently is not licensed to engage in the practice of medicine in Colorado, the state in which Registrant is registered with the DEA.

**Discussion**

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration.[3] *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).

According to Colorado statute, ''[e]very person who manufactures, distributes, or dispenses any controlled substance within this state . . . shall obtain . . . a registration, issued by the respective licensing board . . . . For purposes of this section and this article [ ], 'registration' or 'registered' means . . . the licensing of physicians by the Colorado medical board . . . .'' Colo. Rev. Stat. Ann. § 18–18–302(1) (West 2019). Here, the undisputed evidence in the record is that Registrant's Colorado medical license was revoked by the Colorado Medical Board. Registrant, therefore, is not authorized to dispense

[1] Based on the affidavit of a DEA Diversion Investigator that the Government submitted with the RFAA, the Agency finds that the Government's attempts to serve Registrant with the OSC were adequate. RFAA Exhibit B. Further, based on the assertions of the Government, the Agency finds that more than thirty days have passed and Registrant has not requested a hearing, submitted a written statement or corrective action plan and therefore has waived any such rights. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). RFAA, at 2.

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Respondent may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

[3] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71, 371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

controlled substances in Colorado and is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

**Order**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BH6450174 issued to Julie Halling, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Julie Halling, M.D. to renew or modify this registration, as well as any other pending application of Julie Halling, M.D. for additional registration in Colorado. This Order is effective [insert Date Thirty Days From the Date of Publication in the **Federal Register**].

**Signing Authority**

This document of the Drug Enforcement Administration was signed on June 16, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Scott Brinks,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2022–13602 Filed 6–24–22; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Kevin J. Dobi, APRN; Decision and Order

On October 4, 2017, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (OSC), seeking to deny the March 31, 2017 DEA Certificate of Registration application filed by Kevin J. Dobi APRN (Respondent) for registration in Montana. Request for Final Agency Action Exhibit (RFAAX) 2. The OSC alleged Respondent's application should be denied pursuant to 21 U.S.C. 824(a)(1) because Respondent materially falsified his application. *Id.* at 1.

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in a Request for Final Agency Action (RFAA) on May 16, 2022.[1]

**I. Findings of Fact**

Respondent surrendered for cause a Texas state registered nurse license on or about October 6, 1997. RFAAX 3, at 11 (Order of the Board of Nurse Examiners for the State of Texas). Respondent also surrendered for cause a DEA controlled substance registration, no. MD1340710, on September 9, 2011. RFAAX 1, at 2 (Certification of Respondent's Registration History).

On March 31, 2017, Respondent filed an application seeking a DEA controlled substance registration for schedules II–V. RFAAX 1, at 3–6 (Respondent's application). On the application, Respondent was asked whether he had ''ever surrendered (for cause) . . . a federal controlled substance registration.'' Respondent answered no. *Id.* at 4. Respondent was also asked whether he had ''ever surrendered (for cause) . . . a state professional license.'' Respondent answered no. *Id.* The Agency finds that Respondent's answers were clearly false because Respondent had surrendered a controlled substance registration and a state professional license for cause.

**II. Discussion**

The Administrator may deny an application for registration if the applicant materially falsified an application. 21 U.S.C. 824(a)(1).[2] Here, Respondent provided false information to two liability questions on his March 31, 2017 application—falsely responding that he had never surrendered for cause a state professional license or a federal controlled substances registration. Agency decisions have repeatedly held that false responses to the liability questions on an application for registration are material. *E.g., Crosby Pharmacy and Wellness,* 87 FR 21,214; *Frank Joseph Stirlacci, M.D.,* 85 FR 45,229, 45,234–35 (2020). Accordingly, the Agency finds that the Government has established grounds to deny Respondent's application.

**III. Sanction**

Where, as here, the Government has established grounds to deny an application for registration, the burden shifts to the respondent to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (citing *Samuel S. Jackson,* 72 FR 23,848, 23,853 (2007)). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

In this matter, Respondent did not avail himself of the opportunity to refute the Government's case or demonstrate why he can be entrusted with a registration. Accordingly, the Agency will order the sanctions the Government requested, as contained in the Order below.

**Order**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny the pending application for a Certification of Registration in Montana submitted by Kevin J. Dobi, APRN. This Order is effective July 27, 2022.

**Signing Authority**

This document of the Drug Enforcement Administration was signed on June 16, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this

[1] Respondent made a timely hearing request and submitted a Corrective Action Plan (CAP). RFAAX 4. DEA rejected Respondent's CAP on or about December 21, 2017, RFAAX 5, and a revised CAP was rejected on or about January 29, 2018, RFAAX 6. Respondent waived his right to a hearing, RFAAX 7, and proceedings were terminated on November 29, 2017, RFAAX 8.

[2] Although the language of 21 U.S.C. 824(a) discusses suspension and revocation of a registration, it may also serve as the basis for the denial of a DEA registration application. *E.g., Crosby Pharmacy and Wellness,* 87 FR 21,212, 21,214 (2022); *Robert Wayne Locklear,* 86 FR 33,738. 33,744–45 (2021) (collecting Agency decisions).

document upon publication in the **Federal Register**.

**Scott Brinks,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2022–13626 Filed 6–24–22; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Jonathan Rosenfield, M.D.; Decision and Order

On March 31, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Jonathan Rosenfield, M.D. (hereinafter, Registrant). OSC, at 1 and 3. The OSC proposed the revocation of Registrant's Certificates of Registration Nos. FR4795780 and FR5759216 at the registered addresses of 393 Georgia Avenue SE, Atlanta, Georgia, and 1077 South Main Street, Madison, Georgia. *Id.* at 1. The OSC alleged that Registrant's registrations should be revoked because Registrant is ''without authority to handle controlled substances in Georgia, the state in which [he is] registered with DEA for [both] registrations.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA) dated May 31, 2022.[1]

#### Findings of Fact

A DEA Diversion Investigator attested that he became aware of the lapse in Registrant's Georgia medical license in the course of his official duties and confirmed the lapse on the state website and also ''through conversations with those at the Georgia Composite Medical Board.'' RFAA, App. 2, at 3. According to Georgia's online records, of which the Agency takes official notice, Registrant's Georgia medical license expired on March 31, 2021, and is currently in a ''lapsed'' status.[2] Georgia Composite Medical Board, *https://gcmb.mylicense.com/verification* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Georgia, the state in which Registrant is registered with the DEA.

#### Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).[3]

According to Georgia statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Ga. Code Ann. § 16–13–21(9) (2022). Further, a ''practitioner'' means a ''physician . . . or other person licensed, registered, or otherwise authorized under the laws of [Georgia] to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in [Georgia].'' *Id.* at § 16–13–21(23)(A). Because Registrant is not currently licensed as a physician, or otherwise licensed in Georgia, he is not authorized to dispense controlled substances in Georgia. Therefore, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

#### Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificates of Registration Nos. FR4795780 and FR5759216 issued to Jonathan Rosenfield, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Jonathan Rosenfield, M.D. to renew or modify these registrations, as well as any other pending application of Jonathan Rosenfield, M.D. for additional registration in Georgia. This Order is effective July 27, 2022.

#### Signing Authority

This document of the Drug Enforcement Administration was signed on June 21, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this

[1] Based on the two Declarations from DEA Diversion Investigators that the Government submitted with its RFAA, the Agency finds that the Government's attempts to serve Registrant with the OSC were adequate. RFAA, Apps. 1–2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 4; *see also* 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C).

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's findings by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov*.

[3] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR 27,617.

document upon publication in the **Federal Register**.

**Scott Brinks,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2022–13627 Filed 6–24–22; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1122–0001]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 30 days until July 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** 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.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0001. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended in 2000, 2005, 2013 and 2022. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended in 2000, 2005, 2013, and 2022).

OVW is submitting this revision to a currently approved collection to reflect changes made to the statutorily mandated certifications for grantees under the STOP Formula Grant Program. To be eligible for funds, applicants must certify that they are in compliance with relevant requirements under 28 CFR part 90 and 34 U.S.C 10441 through 10451.

The Violence Against Women Act Reauthorization Act of 2022, Public Law 117–103, div. W, 136 Stat. 49, 840–962 (VAWA 2022), enacted on March 15, 2022, improves and expands legal tools and grant programs addressing domestic violence, dating violence, sexual assault, and stalking. VAWA 2022 reauthorized critical grant programs created by the original Violence Against Women Act and subsequent legislation, established new programs, and strengthened Federal laws as well as adding additional certification requirements for the STOP Formula Grant Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as amended.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the Certification is less than 56 hours.

*If additional information is required contact:* Robert Houser, Assistant Director, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: June 21, 2022.

**Robert Houser,**

*Assistant Director, Policy and Planning Staff, U.S. Department of Justice.*

[FR Doc. 2022–13574 Filed 6–24–22; 8:45 am]

**BILLING CODE 4410–FX–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1122–0023]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of Currently Approved Collection

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 30 days until July 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** 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.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Sexual Assault Services Program—Grants to Culturally Specific Programs (SASP-Culturally Specific Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0023. U.S. Department of Justice, Office on Violence Against Women

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 11 grantees of the SASP Culturally Specific Program. This program supports projects that create, maintain and expand sustainable sexual assault services provided by culturally specific organizations, which are uniquely situated to respond to the needs of sexual assault victims within culturally specific populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 11 respondents (SASP-Culturally Specific Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A SASP-Culturally Specific Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 22 hours, that is 11 grantees completing a form twice a year with an estimated completion time for the form being one hour.

*If additional information is required contact:* Robert Houser, Assistant Director, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: June 21, 2022.

**Robert Houser,**

*Assistant Director, Policy and Planning Staff, U.S. Department of Justice.*

[FR Doc. 2022–13577 Filed 6–24–22; 8:45 am]

**BILLING CODE 4410–FX–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petition for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before July 27, 2022.

**ADDRESSES:** You may submit comments identified by Docket No. MSHA–2022–0031 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0031.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, *Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

**I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

**II. Petition for Modification**

*Docket Number:* M–2022–010–C.

*Petitioner:* American Consolidated Natural Resources, Inc., 46226 National Road, St. Clairsville, Ohio 43950.

*Mines:* Ohio County Mine, MSHA ID No. 46–01436, located in Marshall County, West Virginia; Marshall County Mine, MSHA ID No. 46–01437, located in Marshall County, West Virginia; Marion County Mine, MSHA ID No. 46–01433, located in Marion County, West Virginia; and Harrison County Mine, MSHA ID No. 46–01318, located in Harrison County, West Virginia.

*Regulation Affected:* 30 CFR 75.1002(a), Installation of electric

equipment and conductors; permissibility.

*Modification Request:* The petitioner requests a modification of 30 CFR 75.1002(a) to permit use of the CleanSpace EX Powered Respirator within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) The petitioner previously used the 3M airstream helmets to provide miners respirable dust protection on the longwall faces.

(b) 3M has discontinued the Airstream helmet, and there are no other MSHA-approved Powered Air Purifying Respirators (PAPRs).

(c) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions for use in mines with the potential for methane accumulation.

(d) The CleanSpace EX Power Unit, manufactured by CleanSpace, has been determined to be intrinsically safe under IECEx and other countries' standards.

(e) CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2. Examination results will be recorded weekly and may be expunged after one year.

(b) The petitioner will comply with 30 CFR 75.323.

(c) A qualified person under 30 CFR 75.151 will monitor for methane in the affected area of the mine as is required by the standard.

(d) When not in operation, batteries for the PAPR will be charged on the surface or underground in intake air and not within 150 feet of the pillar workings or longwall face.

(e) *The following battery charging products will be used:* PAF–0066 and PAF–1100.

(f) Qualified miners will receive training regarding how to safely use, care for, and inspect the PAPR, and on the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Song-ae Aromie Noe,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2022–13656 Filed 6–24–22; 8:45 am]

**BILLING CODE 4520–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petition for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before July 27, 2022.

**ADDRESSES:** You may submit comments identified by Docket No. MSHA–2022–0030 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments for MSHA–2022–0030.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov*.
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

*Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

#### II. Petition for Modification

*Docket Number:* M–2022–009–C.

*Petitioner:* American Consolidated Natural Resources, Inc., 46226 National Road, St. Clairsville, Ohio 43950.

*Mines:* Ohio County Mine, MSHA ID No. 46–01436, located in Marshall County, West Virginia; Marshall County Mine, MSHA ID No. 46–01437, located in Marshall County, West Virginia; Marion County Mine, MSHA ID No. 46–01433, located in Marion County, West Virginia; and Harrison County Mine, MSHA ID No. 46–01318, located in Harrison County, West Virginia.

*Regulation Affected:* 30 CFR 75.507-l(a), Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.

*Modification Request:* The petitioner requests a modification of 30 CFR 75.507-l(a) to permit use of the CleanSpace EX Powered Respirator in return air outby the last open crosscut.

The petitioner states that:

(a) The petitioner previously used the 3M airstream helmets to provide miners respirable dust protection on the longwall faces.

(b) 3M has discontinued the Airstream helmet, and there are no other MSHA-approved Powered Air Purifying Respirators (PAPRs).

(c) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions for use in mines with the potential for methane accumulation.

(d) The CleanSpace EX Power Unit, manufactured by CleanSpace, has been

determined to be intrinsically safe under IECEx and other countries' standards.

(e) CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2. Examination results will be recorded weekly and may be expunged after one year.

(b) The petitioner will comply with 30 CFR 75.323.

(c) A qualified person under 30 CFR 75.151 will monitor for methane in the affected area of the mine as is required by the standard.

(d) When not in operation, batteries for the PAPR will be charged on the surface or underground in intake air and in return air outby the last open crosscut.

(e) *The following battery charging products will be used:* PAF–0066 and PAF–1100.

(f) Qualified miners will receive training regarding how to safely use, care for, and inspect the PAPR, and on the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Song-ae Aromie Noe,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2022–13654 Filed 6–24–22; 8:45 am]

**BILLING CODE 4520–43–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2022–0001]**

### Sunshine Act Meetings

**TIME AND DATE:** Weeks of June 27, July 4, 11, 18, 25, August 1, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

**PLACE:** The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

**STATUS:** Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov*.

**MATTERS TO BE CONSIDERED:**

**Week of June 27, 2022**

There are no meetings scheduled for the week of June 27, 2022.

**Week of July 4, 2022—Tentative**

There are no meetings scheduled for the week of July 4, 2022.

**Week of July 11, 2022—Tentative**

There are no meetings scheduled for the week of July 11, 2022.

**Week of July 18, 2022—Tentative**

*Thursday, July 21, 2022*

9 a.m.—Update on 10 CFR part 53 Licensing and Regulation of Advanced Nuclear Reactors (Contact: Greg Oberson: 301–415–2183)

*Additional Information:* The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/*.

Week of July 25, 2022—Tentative

There are no meetings scheduled for the week of July 25, 2022.

Week of August 1, 2022—Tentative

There are no meetings scheduled for the week of August 1, 2022.

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: June 23, 2022.

For the Nuclear Regulatory Commission.

**Wesley W. Held,**

*Policy Coordinator Office of the Secretary.*

[FR Doc. 2022–13746 Filed 6–23–22; 11:15 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2022–73 and CP2022–79; MC2022–74 and CP2022–80; MC2022–75 and CP2022–81]**

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 29, 2022.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any,

can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–73 and CP2022–79; *Filing Title:* USPS Request to Add Priority Mail Contract 748 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 21, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* June 29, 2022.

2. *Docket No(s).:* MC2022–74 and CP2022–80; *Filing Title:* USPS Request to Add Priority Mail Contract 749 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 21, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 29, 2022.

3. *Docket No(s).:* MC2022–75 and CP2022–81; *Filing Title:* USPS Request to Add Priority Mail Contract 750 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 21, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* June 29, 2022.

This Notice will be published in the **Federal Register**.

**Jennie L. Jbara,**

*Alternate Certifying Officer.*

[FR Doc. 2022–13644 Filed 6–24–22; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95129; File No. SR–NYSEArca–2022–35]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company, Intercontinental Exchange, Inc.

June 21, 2022.

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 June 15, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''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

The Exchange proposes to amend the certificate of incorporation and bylaws of its ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes. 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 amend ICE's Fifth Amended and Restated Certificate of Incorporation (the ''ICE Certificate'') and Eighth Amended and Restated Bylaws (the ''ICE Bylaws'') to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes.

The Exchange proposes that the amendments would be effective upon the amended ICE Certificate being filed with the Secretary of State of the State of Delaware.

Eliminating Supermajority Voting Provisions

Certain of the amendments to the ICE Certificate would eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws. The changes are proposed in response to the receipt of a stockholder proposal on October 24, 2020 that was approved at ICE's Annual Stockholder Meeting on May 14, 2021. The changes subsequently were approved by the ICE Board of Directors on March 4, 2022, and by the ICE stockholders on May 13, 2022, in each case subject to filing with the Securities and Exchange Commission (''Commission'').

Under the current ICE Certificate, no adoption, amendment or repeal of any Bylaw by action of stockholders may be effective unless approved by the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon. The proposed changes would amend the ICE Certificate to eliminate this requirement. Instead, the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to adopt, amend or repeal any bylaw by action of stockholders. Article XI, Section 11.3 of the ICE Bylaws would continue to require that, so long as ICE directly or indirectly controls a national securities exchange, before any amendment or repeal of any provision of the ICE Bylaws may be effectuated, it shall be either (i) filed with or filed with and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

approved by the Commission, or (ii) submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission.

The current ICE Certificate also provides that the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon is required in order to amend or repeal Article V, (Limitations on Voting and Ownership), Article VI, Sections B (Number of Directors) or G (Considerations of the Board of Directors), Article IX (Stockholder Action), or Article X (Amendments), Clause (A). As a result of the proposed changes, in accordance with the General Corporation Law of the State of Delaware (''DGCL''), the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to amend the ICE Certificate.[4] Article X would continue to provide that, so long as ICE directly or indirectly controls a national securities exchange, any amendment or repeal of any provision of the ICE Certificate shall be submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission before such amendment or repeal may be effectuated.

To implement the change, the Exchange proposes to make the following amendments to the ICE Certificate:

- The first sentence of Article IX, Section C (Bylaws), would be revised as follows (proposed text underlined, proposed deletion bracketed):

> No adoption, amendment or repeal of a bylaw by action of stockholders shall be effective unless approved by the affirmative vote of the holders of [not less than 66 2/3%, or such higher percentage as may be specified in Section 11.2(b) of the bylaws of the Corporation,]<u>a majority</u> of the voting power of all outstanding shares of Common Stock and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class.

- Clause (A) would be deleted from the second sentence of Article X. The last sentence of the provision also would be deleted, since a vote of stockholders would no longer be required under the article as a result of the removal of Clause (A). The amended article would read as follows (proposed deletion bracketed):

Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, [(A) no provision of ARTICLE V, Section B or G of ARTICLE VI, ARTICLE IX or this clause (A) of ARTICLE X shall be amended, modified or repealed, and no provision inconsistent with any such provision shall become part of this Amended and Restated Certificate of Incorporation, unless such matter is approved by the affirmative vote of the holders of not less than 66⅔% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class; and (B)] for so long as this Corporation shall control, directly or indirectly, any Exchange, before any amendment or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, such amendment or repeal shall be submitted to the boards of directors of each Exchange (or the boards of directors of their successors), and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. [Any vote of stockholders required by this ARTICLE X shall be in addition to any other vote of the stockholders that may be required by law, this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.]

Calling Special Meetings

Under the current ICE Certificate and ICE Bylaws, holders of 50% of the outstanding shares of ICE common stock are entitled to call special meetings of stockholders so long as they satisfy certain procedural requirements.

[4] *See* Del. Code tit 8, § 242(b). The DGCL does not require a stockholder vote to change the corporate name or delete specific obsolete text. *See id.* and § 242(a)(1) and (7).

Stockholders are permitted to aggregate their holdings to reach the special meeting threshold and there is no aggregation cap or minimum duration of ownership requirement.

The proposed amendments to the ICE Certificate would change that requirement. The ICE Certificate would provide that special meetings of stockholders may be called at any time at the request of stockholders of record, so long as such stockholders hold at least 20% of the outstanding shares of ICE's common stock. The revised text would provide that the secretary of ICE would call the meeting only if they received a written request and the requesting stockholder complied with the requirements set forth in the relevant section of the ICE Certificate and ICE Bylaws as well as applicable law. Finally, that the final requirement applies to all four clauses would be clarified.

To implement the change, the Exchange proposes to amend Article VI, Section E (Power to Call Stockholder Meetings) of the ICE Certificate as follows (proposed text underlined, proposed deletions bracketed):

**BILLING CODE 8011–01–P**

Special meetings of stockholders of the Corporation may be called at any time by, but only by, (1) the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors then in office, (2) the Chair[man] of the Board of Directors, (3) the Chief Executive Officer of the Corporation or (4) [request of holders]the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of Common Stock ("Requesting Stockholder") representing in the aggregate at least [50]20% of the shares of Common Stock outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of ARTICLE V; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if such Requesting Stockholder complies with this Section E of ARTICLE VI, the bylaws of the Corporation and applicable law, in each case of clauses (1) through (4), to be held at such date, time and place, if any, either within or without the State of Delaware as may be stated in the notice of the meeting.

Because the special meeting provision in the ICE Bylaws likewise provides for a 50% ownership threshold, the ICE Bylaws would also be amended to lower the special meeting ownership threshold to 20%. Article II, Section 2.5 would be amended to set forth the procedures for calling a special meeting. The first paragraph would set forth the percentage threshold and timing of an email or mailed request. The remainder of Section 2.5 would set forth the informational requirements for a stockholder to request a special meeting, as well as procedural safeguards (such as ensuring that special meetings are called for lawful and appropriate purposes). It also would set forth the procedures for revoking a meeting request, whether by the requesting stockholder or the board of directors, what business may be transacted at the meeting, and what body will determine that the requesting stockholder has

complied with the requirements of the section.

The specific changes would be as follows (proposed text underlined, proposed deletions bracketed):

2.5 Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called at any time by the Board of Directors, the Chair[man] of the Board, if any, or the Chief Executive Officer, or [at the request of holders of Common Stock] the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary by e-mail (with confirmation of receipt) or by registered mail addressed to the Secretary at the principal executive offices of the Corporation ("Acceptable Delivery Method") of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of the Corporation's common stock representing in the aggregate at least [50]20% (the "Special Meeting Requisite Percentage") of the shares of the Corporation's common stock[Common Stock] outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of Article V of the certificate of incorporation[. Such request shall state the purpose or purposes of the proposed meeting.]; provided that a special

meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if (i) such Requesting Stockholder complies with this Section 2.5, Section E of Article VI of the certificate of incorporation, and applicable law; (ii) such Requesting Stockholder continues to own the Special Meeting Requisite Percentage at all times between the date of the Special Meeting Request and the Stockholder Requested Special Meeting; and (iii) the Special Meeting Request complies with this Section 2.5. The date of any Stockholder Requested Special Meeting shall be no later than 90 days after the date that a Special Meeting Request that satisfies the requirements of this Section 2.5 is received by the Secretary (or, in the case of any litigation related to the validity of the Special Meeting Request, 90 days after the final, non-appealable resolution of such litigation).

(a) To be in proper form, a Special Meeting Request shall:

(i) bear the signature and the date of signature of the Requesting Stockholder and (A) in the case of any Requesting Stockholder that is a stockholder of record, set forth the name and address of such Requesting Stockholder as they appear in the Corporation's books and (B) in the case of any Requesting Stockholder that is a beneficial owner, set forth the name and the valid and current address of such Requesting Stockholder;

(ii) set forth a statement of the specific purpose or purposes of such Requesting Stockholder and the matters proposed to be acted on at such Stockholder Requested Special Meeting;

(iii) set forth the calculation of such Requesting Stockholder's shares of capital stock of the Corporation, including the number of shares owned beneficially and of record and disclosure of any short interests, derivative instruments, voting agreements or arrangements or other arrangements that impact the calculation thereof;

(iv) include an agreement by such Requesting Stockholder to notify the Corporation immediately in the case of any reduction prior to the record date for the Stockholder Requested Special Meeting of any shares of capital stock owned beneficially or of record by such Requesting Stockholder and an acknowledgement by such Requesting Stockholder that any such reduction shall be deemed a revocation of such Special Meeting Request to the extent of such reduction, such that the number of shares so reduced shall not be included in determining whether the Special Meeting Requisite Percentage has been reached and maintained; and

(v) include documentary evidence that such Requesting Stockholder own beneficially in the aggregate not less than the Special Meeting Requisite Percentage as of the date of such Special Meeting Request.

(b) Any Requesting Stockholder may revoke his, her or its Special Meeting Request at any time prior to the commencement of the applicable Stockholder Requested Special Meeting by revocation received by the Secretary in accordance with an Acceptable Delivery Method. If, following such revocation at any time before the commencement of such Stockholder Requested Special Meeting (including any revocation resulting from a reduction of shares), the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting. The first date on which valid Special Meeting Requests constituting not less than the Special Meeting Requisite Percentage shall have been received by the Corporation is referred to herein as the "Special Meeting Request Receipt Date".

(c) The Corporation will provide each Requesting Stockholder with notice of the record date for the determination of stockholders entitled to vote at the Stockholder Requested Special Meeting. Each Requesting Stockholder shall update the notice delivered and information previously provided to the Corporation pursuant to this Section 2.5, if necessary, so that the information provided or required to be provided in such notice shall continue to be true and correct (i) as of the record date for the Stockholder Requested Special Meeting and (ii) as of the date of the Stockholder Requested Special Meeting (or any adjournment, recess or postponement thereof), and such update shall be received by the Secretary in accordance with an Acceptable Delivery Method not later than five business days after the record date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the record date) and not later than the date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the date of such Stockholder Requested Special Meeting or any adjournment, recess or postponement thereof). If, pursuant to such update, the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting.

(d) In determining whether a Stockholder Requested Special Meeting has been requested by the record holders of shares representing in the aggregate at least the Special Meeting Requisite Percentage, multiple Special Meeting Requests received by the Secretary will be considered together only if each such Special Meeting Requests (i) identify identical or substantially similar items to be acted on at the Stockholder Requested Special Meeting as determined in good

faith by the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose) ("Special Meeting Similar Items") and (ii) have been dated and received by the Secretary within 60 days of the earliest date of such Special Meeting Requests. If the record holder is not the signatory to the Special Meeting Request, such Special Meeting Request will not be valid unless documentary evidence is supplied to the Secretary at the time of delivery of such Special Meeting Request of such signatory's authority to execute the Special Meeting Request on behalf of the record holder.

(e) Notwithstanding anything to the contrary, the Corporation shall not be required to convene a Stockholder Requested Special Meeting if:

(i) the demand for such special meeting does not comply with this Section 2.5;

(ii) the request relates to an item of business that is not a proper subject for action by a Requesting Stockholder under applicable law, rule or regulation;

(iii) the request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law;

(iv) the Special Meeting Request Receipt Date is during the period commencing 90 days prior to the first anniversary of the date of the preceding annual meeting of stockholders and ending on the date that is 30 days after the next annual meeting of stockholders;

(v) the item specified in the Special Meeting Request is not the election of directors and a Special Meeting Similar Item was presented at any meeting of stockholders held within 12 months prior to the Special Meeting Request Receipt Date;

(vi) a Special Meeting Similar Item consisting of the election or

removal of directors was presented at any meeting of stockholders held not more than 90 days before the Special Meeting Request Receipt Date (and, for purposes of this clause, the election or removal of directors shall be deemed a "Special Meeting Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); or

(vii) a Special Meeting Similar Item is included in the Corporation's notice as an item of business to be brought before a meeting of stockholders that is called for a date within 90 days after the Special Meeting Request Receipt Date.

(f) Business transacted at any Stockholder Requested Special Meeting shall be limited to (i) the purpose(s) stated in any valid Special Meeting Request received from the Requesting Stockholders and (ii) any additional matters that the Board of Directors determines to include in the Corporation's notice of the Stockholder Requested Special Meeting. If none of the Requesting Stockholders who submitted the Special Meeting Request appears or sends a qualified representative to present the matters to be presented for consideration that were specified in the Special Meeting Request, the Corporation need not present such matters for a vote at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(g) Compliance by a Requesting Stockholder with the requirements of this Section 2.5 shall be determined in good faith by the Board of Directors (or, to the extent expressly provided in this Section 2.5, any person to whom the Board of Directors has expressly delegated authority for such purpose).

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Additional Changes

The Exchange proposes to make certain non-substantive and conforming changes to the ICE Certificate and ICE Bylaws.

ICE Certificate

The DGCL provides that a certificate of incorporation shall be proposed by the directors and adopted by the

stockholders if it restates the certificate, integrates any prior amendments, and makes amendments.[5] Accordingly, the second introductory paragraph of the ICE Certificate would state that the Sixth Amended and Restated Certificate of Incorporation (''Sixth Certificate'') restates, integrates, and further amends the provisions of the existing ICE Certificate, the Fifth Amended and Restated Certificate of Incorporation. Obsolete text stating that there was no discrepancy between the text of the current ICE Certificate and the Fourth Amended and Restated Certificates of Incorporation would be deleted. Similarly, the fourth introductory paragraph would state that the ICE Certificate was restated and integrated to read as set forth in the Sixth Certificate.

The Exchange proposes the following additional non-substantive and conforming changes:

- The proposed third and fourth introductory paragraphs would add references to Section 242 of the DGCL. Section 242 sets forth the manner that stockholder approval is effected.[6]
- References to the ''Fifth Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Sixth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.
- The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.
- ''Chairman'' would be updated to ''Chair'' in Article VI, Section E.

ICE Bylaws

The Exchange proposes the following non-substantive and conforming changes:

- References to the ''Eighth Amended and Restated Bylaws'' would be updated to refer to the ''Ninth Amended and Restated Bylaws.''
- The date of effectiveness would be updated.
- ''Chairman'' would be updated to ''Chair'' in Sections 2.5, 2.9, 2.11, 2.13(f), 3.6(b), 3.8 and 5.1. A reference to ''chairman'' would be updated to refer to ''chair'' in Section 2.15(a).
- To clarify that the notice of a special meeting referenced in Section 2.6 would be given by the Corporation, the text ''by the Corporation'' would be added to the first sentence, between ''shall be given'' and ''not fewer than.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[7] in general, and with Section 6(b)(1)[8] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that eliminating the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because the proposed change would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required, enabling the Exchange to continue to comply with the Exchange Act. The proposed change is designed to strengthen stockholder participation rights by allowing stockholders to amend the ICE Certificate and ICE Bylaws with simple majority voting.[9]

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change would affect the operations of the Exchange's ultimate parent and would not impact the governance or ownership of the Exchange. The proposed change would reduce the ownership threshold for special meetings of ICE stockholders, promoting stockholder engagement and participation.[10] At the same time, Proposed Section 2.5 of the ICE Bylaws would provide comprehensive guidance regarding any stockholder requested special meeting, setting forth the percentage threshold; required timing of an email or mailed stockholder request; informational requirements; procedural safeguards; procedures for revoking a meeting request; what business may be transacted at a meeting; and what body will determine that the requesting stockholder has complied with the requirements.

The proposed non-substantive and conforming changes would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency. The additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would similarly provide clarity and transparency by updating the documents.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Exchange Act[11] because the proposed rule change would be consistent with and would create a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to eliminate the

[5] *See* Del. Code tit 8, § 245(b).

[6] *See* Del. Code tit 8, § 242.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a majority vote for any amendment at a meeting of stockholders. *See* Article XI, Section 11.1 of the By-laws of Nasdaq, Inc.

[10] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a special meeting of stockholders be called following the request by stockholders holding at least 15% of the outstanding stock entitled to vote on the matter. *See id.,* Article III, Section 3.2.

[11] 15 U.S.C. 78f(b)(5).

supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, as stockholders and other stakeholders may view supermajority voting provisions as conflicting with principles of good corporate governance. The elimination of supermajority voting provisions in the ICE constituent documents may increase board accountability to stockholders and provide stockholders with greater ability to participate in the corporate governance of ICE. At the same time, existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required would not be amended, continuing the protection of investors and the public interest.

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because it would facilitate stockholder engagement while maintaining procedural safeguards against corporate waste, disruption and abuse by a small minority of stockholders. The Exchange believes that a 20% ownership threshold will help to ensure that special meetings are reserved for those extraordinary matters on which immediate action is deemed necessary by an appropriately large set of ICE's stockholders.

At the same time, by providing comprehensive guidance regarding any requested special meeting, the Exchange believes that the proposed change would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because the changes would provide clarity and transparency regarding the applicable requirements and which actors have authority to act under proposed Section 2.5 of the ICE Bylaws, allowing market participants to more easily understand and comply with the ICE Bylaws.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law. Similarly, the additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would provide clarity and transparency by updating the documents. The Exchange believes that the changes would thereby reduce potential confusion that may result from having an incorrect description or reference in the ICE Certificate or ICE Bylaws.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue or to amend the governing documents of the Exchange, but rather to (a) eliminate the supermajority voting provisions in for amending the ICE Certificate and ICE Bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make non-substantive and conforming changes. The proposed rule change does not impact the governance or ownership of the Exchange. It would not amend existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*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) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] 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 it may become operative immediately upon filing to allow ICE to implement the proposed changes as soon as possible. The Commission notes that the proposed changes would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would not impact the governance, ownership and regulation of the Exchange. Further, the proposed changes retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required.[18] Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[19]

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

[12] 15 U.S.C. 78(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] *See* Article X of the ICE Certificate and Article XI, Section 11.3, of the ICE Bylaws.

[19] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–35 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2022–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2022–35 and should be submitted on or before July 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–13589 Filed 6–24–22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95133; File No. SR–NYSEAMER–2022–25]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company, Intercontinental Exchange, Inc.

June 21, 2022.

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 June 15, 2022, NYSE American LLC (''NYSE American'' or the ''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

The Exchange proposes to amend the certificate of incorporation and bylaws of its ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes. 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.

[20] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

## 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 amend ICE's Fifth Amended and Restated Certificate of Incorporation (the ''ICE Certificate'') and Eighth Amended and Restated Bylaws (the ''ICE Bylaws'') to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes.

The Exchange proposes that the amendments would be effective upon the amended ICE Certificate being filed with the Secretary of State of the State of Delaware.

Eliminating Supermajority Voting Provisions

Certain of the amendments to the ICE Certificate would eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws. The changes are proposed in response to the receipt of a stockholder proposal on October 24, 2020 that was approved at ICE's Annual Stockholder Meeting on May 14, 2021. The changes subsequently were approved by the ICE Board of Directors on March 4, 2022, and by the ICE stockholders on May 13, 2022, in each case subject to filing with the Securities and Exchange Commission (''Commission'').

Under the current ICE Certificate, no adoption, amendment or repeal of any Bylaw by action of stockholders may be effective unless approved by the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon. The proposed changes would amend the

ICE Certificate to eliminate this requirement. Instead, the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to adopt, amend or repeal any bylaw by action of stockholders. Article XI, Section 11.3 of the ICE Bylaws would continue to require that, so long as ICE directly or indirectly controls a national securities exchange, before any amendment or repeal of any provision of the ICE Bylaws may be effectuated, it shall be either (i) filed with or filed with and approved by the Commission, or (ii) submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission.

The current ICE Certificate also provides that the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon is required in order to amend or repeal Article V, (Limitations on Voting and Ownership), Article VI, Sections B (Number of Directors) or G (Considerations of the Board of Directors), Article IX (Stockholder Action), or Article X (Amendments), Clause (A). As a result of the proposed changes, in accordance with the General Corporation Law of the State of Delaware (''DGCL''), the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to amend the ICE Certificate.[4] Article X would continue to provide that, so long as ICE directly or indirectly controls a national securities exchange, any amendment or repeal of any provision of the ICE Certificate shall be submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission before such amendment or repeal may be effectuated.

To implement the change, the Exchange proposes to make the following amendments to the ICE Certificate:

• The first sentence of Article IX, Section C (Bylaws), would be revised as follows (proposed text underlined, proposed deletion bracketed):

> No adoption, amendment or repeal of a bylaw by action of stockholders shall be effective unless approved by the affirmative vote of the holders of [not less than 66 2/3%, or such higher percentage as may be specified in Section 11.2(b) of the bylaws of the Corporation,]a majority of the voting power of all outstanding shares of Common Stock and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class.

• Clause (A) would be deleted from the second sentence of Article X. The last sentence of the provision also would be deleted, since a vote of stockholders would no longer be required under the article as a result of the removal of Clause (A). The amended article would read as follows (proposed deletion bracketed):

Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, [(A) no provision of ARTICLE V, Section B or G of ARTICLE VI, ARTICLE IX or this clause (A) of ARTICLE X shall be amended, modified or repealed, and no provision inconsistent with any such provision shall become part of this Amended and Restated Certificate of Incorporation, unless such matter is approved by the affirmative vote of the holders of not less than 66⅔% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class; and (B)] for so long as this Corporation shall control, directly or indirectly, any Exchange, before any amendment or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, such amendment or repeal shall be submitted to the boards of directors of each Exchange (or the boards of directors of their successors), and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the SEC under section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. [Any vote of stockholders required by this ARTICLE X shall be in addition to any other vote of the stockholders that may be required by law, this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.]

Calling Special Meetings

Under the current ICE Certificate and ICE Bylaws, holders of 50% of the outstanding shares of ICE common stock

[4] *See* Del. Code tit 8, § 242(b). The DGCL does not require a stockholder vote to change the corporate name or delete specific obsolete text. *See id.* and § 242(a)(1) and (7).

are entitled to call special meetings of stockholders so long as they satisfy certain procedural requirements. Stockholders are permitted to aggregate their holdings to reach the special meeting threshold and there is no aggregation cap or minimum duration of ownership requirement.

The proposed amendments to the ICE Certificate would change that requirement. The ICE Certificate would provide that special meetings of stockholders may be called at any time at the request of stockholders of record, so long as such stockholders hold at least 20% of the outstanding shares of ICE's common stock. The revised text would provide that the secretary of ICE would call the meeting only if they received a written request and the requesting stockholder complied with the requirements set forth in the relevant section of the ICE Certificate and ICE Bylaws as well as applicable law. Finally, that the final requirement applies to all four clauses would be clarified.

To implement the change, the Exchange proposes to amend Article VI, Section E (Power to Call Stockholder Meetings) of the ICE Certificate as follows (proposed text underlined, proposed deletions bracketed):

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Special meetings of stockholders of the Corporation may be called at any time by, but only by, (1) the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors then in office, (2) the Chair[man] of the Board of Directors, (3) the Chief Executive Officer of the Corporation or (4) [request of holders]the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of Common Stock ("Requesting Stockholder") representing in the aggregate at least [50]20% of the shares of Common Stock outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of ARTICLE V; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if such Requesting Stockholder complies with this Section E of ARTICLE VI, the bylaws of the Corporation and applicable law, in each case of clauses (1) through (4), to be held at such date, time and place, if any, either within or without the State of Delaware as may be stated in the notice of the meeting.

Because the special meeting provision in the ICE Bylaws likewise provides for a 50% ownership threshold, the ICE Bylaws would also be amended to lower the special meeting ownership threshold to 20%. Article II, Section 2.5 would be amended to set forth the procedures for calling a special meeting. The first paragraph would set forth the percentage threshold and timing of an email or mailed request. The remainder of Section 2.5 would set forth the informational requirements for a stockholder to request a special meeting, as well as procedural safeguards (such as ensuring that special meetings are called for lawful and appropriate purposes). It also would set forth the procedures for revoking a meeting request, whether by the requesting stockholder or the board of directors,

what business may be transacted at the meeting, and what body will determine that the requesting stockholder has complied with the requirements of the section.

The specific changes would be as follows (proposed text underlined, proposed deletions bracketed):

2.5 Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called at any time by the Board of Directors, the Chair[man] of the Board, if any, or the Chief Executive Officer, or [at the request of holders of Common Stock] the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary by e-mail (with confirmation of receipt) or by registered mail addressed to the Secretary at the principal executive offices of the Corporation ("Acceptable Delivery Method") of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of the Corporation's common stock representing in the aggregate at least [50]20% (the "Special Meeting Requisite Percentage") of the shares of the Corporation's common stock[Common Stock] outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of Article V of the certificate of incorporation[. Such request shall state the purpose or purposes of the proposed meeting.]; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if (i) such

Requesting Stockholder complies with this Section 2.5, Section E of Article VI of the certificate of incorporation, and applicable law; (ii) such Requesting Stockholder continues to own the Special Meeting Requisite Percentage at all times between the date of the Special Meeting Request and the Stockholder Requested Special Meeting; and (iii) the Special Meeting Request complies with this Section 2.5. The date of any Stockholder Requested Special Meeting shall be no later than 90 days after the date that a Special Meeting Request that satisfies the requirements of this Section 2.5 is received by the Secretary (or, in the case of any litigation related to the validity of the Special Meeting Request, 90 days after the final, non-appealable resolution of such litigation).

(a) To be in proper form, a Special Meeting Request shall:

(i) bear the signature and the date of signature of the Requesting Stockholder and (A) in the case of any Requesting Stockholder that is a stockholder of record, set forth the name and address of such Requesting Stockholder as they appear in the Corporation's books and (B) in the case of any Requesting Stockholder that is a beneficial owner, set forth the name and the valid and current address of such Requesting Stockholder;

(ii) set forth a statement of the specific purpose or purposes of such Requesting Stockholder and the matters proposed to be acted on at such Stockholder Requested Special Meeting;

(iii) set forth the calculation of such Requesting Stockholder's shares of capital stock of the Corporation, including the number of shares owned beneficially and of record and disclosure of any short interests, derivative instruments, voting agreements or arrangements or other arrangements that impact the calculation thereof;

(iv) include an agreement by such Requesting Stockholder to notify the Corporation immediately in the case of any reduction prior to the record date for the Stockholder Requested Special Meeting of any shares of capital stock owned beneficially or of record by such Requesting Stockholder and an acknowledgement by such Requesting Stockholder that any such reduction shall be deemed a revocation of such Special Meeting Request to the extent of such reduction, such that the number of shares so reduced shall not be included in determining whether the Special Meeting Requisite Percentage has been reached and maintained; and

(v) include documentary evidence that such Requesting Stockholder own beneficially in the aggregate not less than the Special Meeting Requisite Percentage as of the date of such Special Meeting Request.

(b) Any Requesting Stockholder may revoke his, her or its Special Meeting Request at any time prior to the commencement of the applicable Stockholder Requested Special Meeting by revocation received by the Secretary in accordance with an Acceptable Delivery Method. If, following such revocation at any time before the commencement of such Stockholder Requested Special Meeting (including any revocation resulting from a reduction of shares), the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting. The first date on which valid Special Meeting Requests constituting not less than the Special Meeting Requisite Percentage shall have been received by the Corporation is referred to herein as the "Special Meeting Request Receipt Date".

(c) The Corporation will provide each Requesting Stockholder with notice of the record date for the determination of stockholders entitled to vote at the Stockholder Requested Special Meeting. Each Requesting Stockholder shall update the notice delivered and information previously provided to the Corporation pursuant to this Section 2.5, if necessary, so that the information provided or required to be provided in such notice shall continue to be true and correct (i) as of the record date for the Stockholder Requested Special Meeting and (ii) as of the date of the Stockholder Requested Special Meeting (or any adjournment, recess or postponement thereof), and such update shall be received by the Secretary in accordance with an Acceptable Delivery Method not later than five business days after the record date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the record date) and not later than the date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the date of such Stockholder Requested Special Meeting or any adjournment, recess or postponement thereof). If, pursuant to such update, the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting.

(d) In determining whether a Stockholder Requested Special Meeting has been requested by the record holders of shares representing in the aggregate at least the Special Meeting Requisite Percentage, multiple Special Meeting Requests received by the Secretary will be considered together only if each such Special Meeting Requests (i) identify identical or substantially similar items to be acted on at the Stockholder Requested Special Meeting as determined in good

faith by the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose) ("Special Meeting Similar Items") and (ii) have been dated and received by the Secretary within 60 days of the earliest date of such Special Meeting Requests. If the record holder is not the signatory to the Special Meeting Request, such Special Meeting Request will not be valid unless documentary evidence is supplied to the Secretary at the time of delivery of such Special Meeting Request of such signatory's authority to execute the Special Meeting Request on behalf of the record holder.

(e) Notwithstanding anything to the contrary, the Corporation shall not be required to convene a Stockholder Requested Special Meeting if:

(i) the demand for such special meeting does not comply with this Section 2.5;

(ii) the request relates to an item of business that is not a proper subject for action by a Requesting Stockholder under applicable law, rule or regulation;

(iii) the request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law;

(iv) the Special Meeting Request Receipt Date is during the period commencing 90 days prior to the first anniversary of the date of the preceding annual meeting of stockholders and ending on the date that is 30 days after the next annual meeting of stockholders;

(v) the item specified in the Special Meeting Request is not the election of directors and a Special Meeting Similar Item was presented at any meeting of stockholders held within 12 months prior to the Special Meeting Request Receipt Date;

(vi) a Special Meeting Similar Item consisting of the election or

removal of directors was presented at any meeting of stockholders held not more than 90 days before the Special Meeting Request Receipt Date (and, for purposes of this clause, the election or removal of directors shall be deemed a "Special Meeting Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); or

(vii) a Special Meeting Similar Item is included in the Corporation's notice as an item of business to be brought before a meeting of stockholders that is called for a date within 90 days after the Special Meeting Request Receipt Date.

(f) Business transacted at any Stockholder Requested Special Meeting shall be limited to (i) the purpose(s) stated in any valid Special Meeting Request received from the Requesting Stockholders and (ii) any additional matters that the Board of Directors determines to include in the Corporation's notice of the Stockholder Requested Special Meeting. If none of the Requesting Stockholders who submitted the Special Meeting Request appears or sends a qualified representative to present the matters to be presented for consideration that were specified in the Special Meeting Request, the Corporation need not present such matters for a vote at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(g) Compliance by a Requesting Stockholder with the requirements of this Section 2.5 shall be determined in good faith by the Board of Directors (or, to the extent expressly provided in this Section 2.5, any person to whom the Board of Directors has expressly delegated authority for such purpose).

BILLING CODE 8011–01–C

Additional Changes

The Exchange proposes to make certain non-substantive and conforming changes to the ICE Certificate and ICE Bylaws.

ICE Certificate

The DGCL provides that a certificate of incorporation shall be proposed by the directors and adopted by the

stockholders if it restates the certificate, integrates any prior amendments, and makes amendments.[5] Accordingly, the second introductory paragraph of the ICE Certificate would state that the Sixth Amended and Restated Certificate of Incorporation (''Sixth Certificate'') restates, integrates, and further amends the provisions of the existing ICE Certificate, the Fifth Amended and Restated Certificate of Incorporation. Obsolete text stating that there was no discrepancy between the text of the current ICE Certificate and the Fourth Amended and Restated Certificates of Incorporation would be deleted. Similarly, the fourth introductory paragraph would state that the ICE Certificate was restated and integrated to read as set forth in the Sixth Certificate.

The Exchange proposes the following additional non-substantive and conforming changes:

- The proposed third and fourth introductory paragraphs would add references to Section 242 of the DGCL. Section 242 sets forth the manner that stockholder approval is effected.[6]
- References to the ''Fifth Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Sixth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.
- The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.
- ''Chairman'' would be updated to ''Chair'' in Article VI, Section E.

ICE Bylaws

The Exchange proposes the following non-substantive and conforming changes:

- References to the ''Eighth Amended and Restated Bylaws'' would be updated to refer to the ''Ninth Amended and Restated Bylaws.''
- The date of effectiveness would be updated.
- ''Chairman'' would be updated to ''Chair'' in Sections 2.5, 2.9, 2.11, 2.13(f), 3.6(b), 3.8 and 5.1. A reference to ''chairman'' would be updated to refer to ''chair'' in Section 2.15(a).
- To clarify that the notice of a special meeting referenced in Section 2.6 would be given by the Corporation, the text ''by the Corporation'' would be added to the first sentence, between ''shall be given'' and ''not fewer than.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[7] in general, and with Section 6(b)(1)[8] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that eliminating the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because the proposed change would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required, enabling the Exchange to continue to comply with the Exchange Act. The proposed change is designed to strengthen stockholder participation rights by allowing stockholders to amend the ICE Certificate and ICE Bylaws with simple majority voting.[9]

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change would affect the operations of the Exchange's ultimate parent and would not impact the governance or ownership of the Exchange. The proposed change would reduce the ownership threshold for special meetings of ICE stockholders, promoting stockholder engagement and participation.[10] At the same time, Proposed Section 2.5 of the ICE Bylaws would provide comprehensive guidance regarding any stockholder requested special meeting, setting forth the percentage threshold; required timing of an email or mailed stockholder request; informational requirements; procedural safeguards; procedures for revoking a meeting request; what business may be transacted at a meeting; and what body will determine that the requesting stockholder has complied with the requirements.

The proposed non-substantive and conforming changes would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency. The additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would similarly provide clarity and transparency by updating the documents.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Exchange Act[11] because the proposed rule change would be consistent with and would create a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to eliminate the

[5] *See* Del. Code tit 8, § 245(b).

[6] *See* Del. Code tit 8, § 242.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a majority vote for any amendment at a meeting of stockholders. *See* Article XI, Section 11.1 of the By-laws of Nasdaq, Inc.

[10] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a special meeting of stockholders be called following the request by stockholders holding at least 15% of the outstanding stock entitled to vote on the matter. *See id.,* Article III, Section 3.2.

[11] 15 U.S.C. 78f(b)(5).

supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, as stockholders and other stakeholders may view supermajority voting provisions as conflicting with principles of good corporate governance. The elimination of supermajority voting provisions in the ICE constituent documents may increase board accountability to stockholders and provide stockholders with greater ability to participate in the corporate governance of ICE. At the same time, existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required would not be amended, continuing the protection of investors and the public interest.

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because it would facilitate stockholder engagement while maintaining procedural safeguards against corporate waste, disruption and abuse by a small minority of stockholders. The Exchange believes that a 20% ownership threshold will help to ensure that special meetings are reserved for those extraordinary matters on which immediate action is deemed necessary by an appropriately large set of ICE's stockholders.

At the same time, by providing comprehensive guidance regarding any requested special meeting, the Exchange believes that the proposed change would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because the changes would provide clarity and transparency regarding the applicable requirements and which actors have authority to act under proposed Section 2.5 of the ICE Bylaws, allowing market participants to more easily understand and comply with the ICE Bylaws.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law. Similarly, the additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would provide clarity and transparency by updating the documents. The Exchange believes that the changes would thereby reduce potential confusion that may result from having an incorrect description or reference in the ICE Certificate or ICE Bylaws.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue or to amend the governing documents of the Exchange, but rather to (a) eliminate the supermajority voting provisions in for amending the ICE Certificate and ICE Bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make non-substantive and conforming changes. The proposed rule change does not impact the governance or ownership of the Exchange. It would not amend existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*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) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] 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 it may become operative immediately upon filing to allow ICE to implement the proposed changes as soon as possible. The Commission notes that the proposed changes would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would not impact the governance, ownership and regulation of the Exchange. Further, the proposed changes retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required.[18] Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[19]

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

[12] 15 U.S.C. 78(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] *See* Article X of the ICE Certificate and Article XI, Section 11.3, of the ICE Bylaws.

[19] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–25 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–2022–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–25 and should be submitted on or before July 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–13591 Filed 6–24–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–405, OMB Control No. 3235–0462]**

## Proposed Collection; Comment Request; Extension: Customer Account Statements

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 604 (17 CFR 242.604) under the Securities Exchange Act of 1934 (17 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 604 requires specialists and market makers to publish customer limit orders that are priced superior to the bids or offers being displayed by each such specialist or market maker.[1] Customer limit orders that match the bid or offer being displayed by a specialist or market maker must be published if the limit price also matches the national best bid or offer (''NBBO'') and the size of the customer limit order is more than de minimis (*i.e.,* more than 10% of the specialist's or market maker's displayed size).

The information collected pursuant to Rule 604 is necessary to facilitate the establishment of a national market system for securities. The publication of trading interests that improve specialists' and market makers' quotes presents investors with improved execution opportunities and improved access to the best available prices when they buy or sell securities.

The Commission estimates that approximately 318 respondents will respond to the collection of information requirements each time they receive a displayable customer limit order. The Commission further estimates that a respondent will receive a customer limit order, on average, 15,136.767 times per trading day with an estimate average time of 0.1 second per quote update. Accordingly, assuming 252 days in a trading year, an average 105.957 hours per year per respondent, the Commission estimates that the total annual burden for all respondents is 33,694 hours.

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 in writing by August 26, 2022.

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.*

Dated: June 21, 2022.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–13603 Filed 6–24–22; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 17 CFR 200.30–3(a)(12), (59).

[1] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95134; File No. SR–NYSE–2022–24]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company, Intercontinental Exchange, Inc.

June 21, 2022.

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 June 15, 2022, New York Stock Exchange LLC (''NYSE'' or the ''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

The Exchange proposes to amend the certificate of incorporation and bylaws of its ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes. 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 amend ICE's Fifth Amended and Restated Certificate of Incorporation (the ''ICE Certificate'') and Eighth Amended and Restated Bylaws (the ''ICE Bylaws'') to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes.

The Exchange proposes that the amendments would be effective upon the amended ICE Certificate being filed with the Secretary of State of the State of Delaware.

Eliminating Supermajority Voting Provisions

Certain of the amendments to the ICE Certificate would eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws. The changes are proposed in response to the receipt of a stockholder proposal on October 24, 2020 that was approved at ICE's Annual Stockholder Meeting on May 14, 2021. The changes subsequently were approved by the ICE Board of Directors on March 4, 2022, and by the ICE stockholders on May 13, 2022, in each case subject to filing with the Securities and Exchange Commission (''Commission'').

Under the current ICE Certificate, no adoption, amendment or repeal of any Bylaw by action of stockholders may be effective unless approved by the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon. The proposed changes would amend the ICE Certificate to eliminate this requirement. Instead, the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to adopt, amend or repeal any bylaw by action of stockholders. Article XI, Section 11.3 of the ICE Bylaws would continue to require that, so long as ICE directly or indirectly controls a national securities exchange, before any amendment or repeal of any provision of the ICE Bylaws may be effectuated, it shall be either (i) filed with or filed with and approved by the Commission, or (ii) submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission.

The current ICE Certificate also provides that the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon is required in order to amend or repeal Article V, (Limitations on Voting and Ownership), Article VI, Sections B (Number of Directors) or G (Considerations of the Board of Directors), Article IX (Stockholder Action), or Article X (Amendments), Clause (A). As a result of the proposed changes, in accordance with the General Corporation Law of the State of Delaware (''DGCL''), the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to amend the ICE Certificate.[4] Article X would continue to provide that, so long as ICE directly or indirectly controls a national securities exchange, any amendment or repeal of any provision of the ICE Certificate shall be submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission before such amendment or repeal may be effectuated.

To implement the change, the Exchange proposes to make the following amendments to the ICE Certificate:

- The first sentence of Article IX, Section C (Bylaws), would be revised as follows (proposed text underlined, proposed deletion bracketed):

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Del. Code tit 8, § 242(b). The DGCL does not require a stockholder vote to change the corporate name or delete specific obsolete text. *See id.* and § 242(a)(1) and (7).

No adoption, amendment or repeal of a bylaw by action of stockholders shall be effective unless approved by the affirmative vote of the holders of [not less than 66 2/3%, or such higher percentage as may be specified in Section 11.2(b) of the bylaws of the Corporation,]a majority of the voting power of all outstanding shares of Common Stock and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class.

• Clause (A) would be deleted from the second sentence of Article X. The last sentence of the provision also would be deleted, since a vote of stockholders would no longer be required under the article as a result of the removal of Clause (A). The amended article would read as follows (proposed deletion bracketed):

Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, [(A) no provision of ARTICLE V, Section B or G of ARTICLE VI, ARTICLE IX or this clause (A) of ARTICLE X shall be amended, modified or repealed, and no provision inconsistent with any such provision shall become part of this Amended and Restated Certificate of Incorporation, unless such matter is approved by the affirmative vote of the holders of not less than 66⅔% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class; and (B)] for so long as this Corporation shall control, directly or indirectly, any Exchange, before any amendment or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, such amendment or repeal shall be submitted to the boards of directors of each Exchange (or the boards of directors of their successors), and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. [Any vote of stockholders required by this ARTICLE X shall be in addition to any other vote of the stockholders that may be required by law, this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.]

Calling Special Meetings

Under the current ICE Certificate and ICE Bylaws, holders of 50% of the outstanding shares of ICE common stock are entitled to call special meetings of stockholders so long as they satisfy certain procedural requirements. Stockholders are permitted to aggregate their holdings to reach the special meeting threshold and there is no aggregation cap or minimum duration of ownership requirement.

The proposed amendments to the ICE Certificate would change that requirement. The ICE Certificate would provide that special meetings of stockholders may be called at any time at the request of stockholders of record, so long as such stockholders hold at least 20% of the outstanding shares of ICE's common stock. The revised text would provide that the secretary of ICE would call the meeting only if they received a written request and the requesting stockholder complied with the requirements set forth in the relevant section of the ICE Certificate and ICE Bylaws as well as applicable law. Finally, that the final requirement applies to all four clauses would be clarified.

To implement the change, the Exchange proposes to amend Article VI, Section E (Power to Call Stockholder Meetings) of the ICE Certificate as follows (proposed text underlined, proposed deletions bracketed):

BILLING CODE 8011–01–P

Special meetings of stockholders of the Corporation may be called at any time by, but only by, (1) the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors then in office, (2) the Chair[man] of the Board of Directors, (3) the Chief Executive Officer of the Corporation or (4) [request of holders]the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of Common Stock ("Requesting Stockholder") representing in the aggregate at least [50]20% of the shares of Common Stock outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of ARTICLE V; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if such Requesting Stockholder complies with this Section E of ARTICLE VI, the bylaws of the Corporation and applicable law, in each case of clauses (1) through (4), to be held at such date, time and place, if any, either within or without the State of Delaware as may be stated in the notice of the meeting.

Because the special meeting provision in the ICE Bylaws likewise provides for a 50% ownership threshold, the ICE Bylaws would also be amended to lower the special meeting ownership threshold to 20%. Article II, Section 2.5 would be amended to set forth the procedures for calling a special meeting. The first paragraph would set forth the percentage threshold and timing of an email or mailed request. The remainder of Section 2.5 would set forth the informational requirements for a stockholder to request a special meeting, as well as procedural safeguards (such as ensuring that special meetings are called for lawful and appropriate purposes). It also would set forth the procedures for revoking a meeting request, whether by the requesting stockholder or the board of directors, what business may be transacted at the meeting, and what body will determine that the requesting stockholder has complied with the requirements of the section.

The specific changes would be as follows (proposed text underlined, proposed deletions bracketed):

2.5 Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called at any time by the Board of Directors, the Chair[man] of the Board, if any, or the Chief Executive Officer, or [at the request of holders of Common Stock] the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary by e-mail (with confirmation of receipt) or by registered mail addressed to the Secretary at the principal executive offices of the Corporation ("Acceptable Delivery Method") of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of the Corporation's common stock representing in the aggregate at least [50]20% (the "Special Meeting Requisite Percentage") of the shares of the Corporation's common stock[Common Stock] outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of Article V of the certificate of incorporation[. Such request shall

state the purpose or purposes of the proposed meeting.]; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if (i) such Requesting Stockholder complies with this Section 2.5, Section E of Article VI of the certificate of incorporation, and applicable law; (ii) such Requesting Stockholder continues to own the Special Meeting Requisite Percentage at all times between the date of the Special Meeting Request and the Stockholder Requested Special Meeting; and (iii) the Special Meeting Request complies with this Section 2.5. The date of any Stockholder Requested Special Meeting shall be no later than 90 days after the date that a Special Meeting Request that satisfies the requirements of this Section 2.5 is received by the Secretary (or, in the case of any litigation related to the validity of the Special Meeting Request, 90 days after the final, non-appealable resolution of such litigation).

(a) To be in proper form, a Special Meeting Request shall:

(i) bear the signature and the date of signature of the Requesting Stockholder and (A) in the case of any Requesting Stockholder that is a stockholder of record, set forth the name and address of such Requesting Stockholder as they appear in the Corporation's books and (B) in the case of any Requesting Stockholder that is a beneficial owner, set forth the name and the valid and current address of such Requesting Stockholder;

(ii) set forth a statement of the specific purpose or purposes of such Requesting Stockholder and the matters proposed to be acted on at such Stockholder Requested Special Meeting;

(iii) set forth the calculation of such Requesting Stockholder's shares of capital stock of the Corporation, including the number of shares

owned beneficially and of record and disclosure of any short interests, derivative instruments, voting agreements or arrangements or other arrangements that impact the calculation thereof;

(iv) include an agreement by such Requesting Stockholder to notify the Corporation immediately in the case of any reduction prior to the record date for the Stockholder Requested Special Meeting of any shares of capital stock owned beneficially or of record by such Requesting Stockholder and an acknowledgement by such Requesting Stockholder that any such reduction shall be deemed a revocation of such Special Meeting Request to the extent of such reduction, such that the number of shares so reduced shall not be included in determining whether the Special Meeting Requisite Percentage has been reached and maintained; and

(v) include documentary evidence that such Requesting Stockholder own beneficially in the aggregate not less than the Special Meeting Requisite Percentage as of the date of such Special Meeting Request.

(b) Any Requesting Stockholder may revoke his, her or its Special Meeting Request at any time prior to the commencement of the applicable Stockholder Requested Special Meeting by revocation received by the Secretary in accordance with an Acceptable Delivery Method. If, following such revocation at any time before the commencement of such Stockholder Requested Special Meeting (including any revocation resulting from a reduction of shares), the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting. The first date on which valid Special Meeting Requests constituting not less than the Special Meeting Requisite Percentage shall have been received by the Corporation is referred to herein as the "Special Meeting Request Receipt Date".

(c) The Corporation will provide each Requesting Stockholder with notice of the record date for the determination of stockholders entitled to vote at the Stockholder Requested Special Meeting. Each Requesting Stockholder shall update the notice delivered and information previously provided to the Corporation pursuant to this Section 2.5, if necessary, so that the information provided or required to be provided in such notice shall continue to be true and correct (i) as of the record date for the Stockholder Requested Special Meeting and (ii) as of the date of the Stockholder Requested Special Meeting (or any adjournment, recess or postponement thereof), and such update shall be received by the Secretary in accordance with an Acceptable Delivery Method not later than five business days after the record date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the record date) and not later than the date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the date of such Stockholder Requested Special Meeting or any adjournment, recess or postponement thereof). If, pursuant to such update, the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting.

(d) In determining whether a Stockholder Requested Special Meeting has been requested by the record holders of shares representing in the aggregate at least the Special Meeting Requisite Percentage, multiple Special Meeting

Requests received by the Secretary will be considered together only if each such Special Meeting Requests (i) identify identical or substantially similar items to be acted on at the Stockholder Requested Special Meeting as determined in good faith by the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose) ("Special Meeting Similar Items") and (ii) have been dated and received by the Secretary within 60 days of the earliest date of such Special Meeting Requests. If the record holder is not the signatory to the Special Meeting Request, such Special Meeting Request will not be valid unless documentary evidence is supplied to the Secretary at the time of delivery of such Special Meeting Request of such signatory's authority to execute the Special Meeting Request on behalf of the record holder.

(e) Notwithstanding anything to the contrary, the Corporation shall not be required to convene a Stockholder Requested Special Meeting if:

(i) the demand for such special meeting does not comply with this Section 2.5;

(ii) the request relates to an item of business that is not a proper subject for action by a Requesting Stockholder under applicable law, rule or regulation;

(iii) the request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law;

(iv) the Special Meeting Request Receipt Date is during the period commencing 90 days prior to the first anniversary of the date of the preceding annual meeting of stockholders and ending on the date that is 30 days after the next annual meeting of stockholders;

(v) the item specified in the Special Meeting Request is not the election of directors and a Special Meeting Similar Item was presented at

any meeting of stockholders held within 12 months prior to the Special Meeting Request Receipt Date;

(vi) a Special Meeting Similar Item consisting of the election or removal of directors was presented at any meeting of stockholders held not more than 90 days before the Special Meeting Request Receipt Date (and, for purposes of this clause, the election or removal of directors shall be deemed a "Special Meeting Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); or

(vii) a Special Meeting Similar Item is included in the Corporation's notice as an item of business to be brought before a meeting of stockholders that is called for a date within 90 days after the Special Meeting Request Receipt Date.

(f) Business transacted at any Stockholder Requested Special Meeting shall be limited to (i) the purpose(s) stated in any valid Special Meeting Request received from the Requesting Stockholders and (ii) any additional matters that the Board of Directors determines to include in the Corporation's notice of the Stockholder Requested Special Meeting. If none of the Requesting Stockholders who submitted the Special Meeting Request appears or sends a qualified representative to present the matters to be presented for consideration that were specified in the Special Meeting Request, the Corporation need not present such matters for a vote at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(g) Compliance by a Requesting Stockholder with the requirements of this Section 2.5 shall be determined in good faith by the Board of Directors (or, to the extent expressly provided in this Section 2.5, any person to whom the Board of Directors has expressly delegated authority for such purpose).

**BILLING CODE 8011–01–C**

Additional Changes

The Exchange proposes to make certain non-substantive and conforming changes to the ICE Certificate and ICE Bylaws.

ICE Certificate

The DGCL provides that a certificate of incorporation shall be proposed by the directors and adopted by the stockholders if it restates the certificate, integrates any prior amendments, and makes amendments.[5] Accordingly, the second introductory paragraph of the ICE Certificate would state that the Sixth Amended and Restated Certificate of Incorporation (''Sixth Certificate'') restates, integrates, and further amends the provisions of the existing ICE Certificate, the Fifth Amended and Restated Certificate of Incorporation. Obsolete text stating that there was no discrepancy between the text of the current ICE Certificate and the Fourth Amended and Restated Certificates of Incorporation would be deleted. Similarly, the fourth introductory paragraph would state that the ICE Certificate was restated and integrated to read as set forth in the Sixth Certificate.

The Exchange proposes the following additional non-substantive and conforming changes:

- The proposed third and fourth introductory paragraphs would add references to Section 242 of the DGCL. Section 242 sets forth the manner that stockholder approval is effected.[6]
- References to the ''Fifth Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Sixth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.
- The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.
- ''Chairman'' would be updated to ''Chair'' in Article VI, Section E.

ICE Bylaws

The Exchange proposes the following non-substantive and conforming changes:

- References to the ''Eighth Amended and Restated Bylaws'' would be updated to refer to the ''Ninth Amended and Restated Bylaws.''
- The date of effectiveness would be updated.
- ''Chairman'' would be updated to ''Chair'' in Sections 2.5, 2.9, 2.11, 2.13(f), 3.6(b), 3.8 and 5.1. A reference to ''chairman'' would be updated to refer to ''chair'' in Section 2.15(a).
- To clarify that the notice of a special meeting referenced in Section 2.6 would be given by the Corporation, the text ''by the Corporation'' would be added to the first sentence, between ''shall be given'' and ''not fewer than.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[7] in general, and with Section 6(b)(1)[8] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that eliminating the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because the proposed change would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required, enabling the Exchange to continue to comply with the Exchange Act. The proposed change is designed to strengthen stockholder participation rights by allowing stockholders to amend the ICE Certificate and ICE Bylaws with simple majority voting.[9]

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change would affect the operations of the Exchange's ultimate parent and would not impact the governance or ownership of the Exchange. The proposed change would reduce the ownership threshold for special meetings of ICE stockholders, promoting stockholder engagement and participation.[10] At the same time, Proposed Section 2.5 of the ICE Bylaws would provide comprehensive guidance regarding any stockholder requested special meeting, setting forth the percentage threshold; required timing of an email or mailed stockholder request; informational requirements; procedural safeguards; procedures for revoking a meeting request; what business may be

[5] *See* Del. Code tit 8, § 245(b).

[6] *See* Del. Code tit 8, § 242.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a majority vote for any amendment at a meeting of stockholders. *See* Article XI, Section 11.1 of the By-laws of Nasdaq, Inc.

[10] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a special meeting of stockholders be called following the request by stockholders holding at least 15% of the outstanding stock entitled to vote on the matter. *See id.,* Article III, Section 3.2.

transacted at a meeting; and what body will determine that the requesting stockholder has complied with the requirements.

The proposed non-substantive and conforming changes would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency. The additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would similarly provide clarity and transparency by updating the documents.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Exchange Act [11] because the proposed rule change would be consistent with and would create a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, as stockholders and other stakeholders may view supermajority voting provisions as conflicting with principles of good corporate governance. The elimination of supermajority voting provisions in the ICE constituent documents may increase board accountability to stockholders and provide stockholders with greater ability to participate in the corporate governance of ICE. At the same time, existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required would not be amended, continuing the protection of investors and the public interest.

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because it would facilitate stockholder engagement while maintaining procedural safeguards against corporate waste, disruption and abuse by a small minority of stockholders. The Exchange believes that a 20% ownership threshold will help to ensure that special meetings are reserved for those extraordinary matters on which immediate action is deemed necessary by an appropriately large set of ICE's stockholders.

At the same time, by providing comprehensive guidance regarding any requested special meeting, the Exchange believes that the proposed change would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because the changes would provide clarity and transparency regarding the applicable requirements and which actors have authority to act under proposed Section 2.5 of the ICE Bylaws, allowing market participants to more easily understand and comply with the ICE Bylaws.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law. Similarly, the additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would provide clarity and transparency by updating the documents. The Exchange believes that the changes would thereby reduce potential confusion that may result from having an incorrect description or reference in the ICE Certificate or ICE Bylaws.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue or to amend the governing documents of the Exchange, but rather to (a) eliminate the supermajority voting provisions in for amending the ICE Certificate and ICE Bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make non-substantive and conforming changes. The proposed rule change does not impact the governance or ownership of the Exchange. It would not amend existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*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) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] 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 it may become operative immediately upon filing to allow ICE to implement the proposed changes as soon as possible. The Commission notes that the proposed changes would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would not impact the governance, ownership and regulation of the Exchange. Further, the proposed changes retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required.[18] Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–24 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–NYSE–2022–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–24 and should be submitted on or before July 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–13592 Filed 6–24–22; 8:45 am]

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[17] 17 CFR 240.19b–4(f)(6).

[18] *See* Article X of the ICE Certificate and Article XI, Section 11.3, of the ICE Bylaws.

[19] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12), (59).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2 p.m. on Thursday, June 30, 2022.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**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: June 23, 2022.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2022–13767 Filed 6–23–22; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95135; File No. SR–NYSEAMER–2022–26]**

## Self-Regulatory Organizations; NYSE American, LLC.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 902NY To Remove an Obsolete Reference

June 21, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 16, 2022, 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 amend Rule 902NY(c) (Admission and Conduct on the Options Trading Floor) to remove an obsolete reference. 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 amend Rule 902NY(c) regarding that Standards of Dress and Conduct on the Exchange to remove an obsolete reference.

Rule 902NYspecifies the requirements for conduct and dress for person to follow while on the Options Trading Floor.[4] Rule 902NY(c) ''Standards of Dress and Conduct'', as follows:

> All ATP Holders are required to act in a manner consistent with a fair and orderly market and with the maintenance of public confidence in the Exchange. All persons on the Options Trading Floor shall comply with the standards of dress and conduct in Chapter 13, Floor Conduct Policy, of the NYSE Floor Officials Manual.[5]

The reference to Chapter 13, Floor Conduct Policy, of the NYSE Floor Officials Manual is obsolete. Historically, the behavior and conduct of NYSE members on the NYSE equities trading Floor was regulated by Floor Conduct and Safety Guidelines administered by NYSE Floor Officials. In 2021, however, the NYSE eliminated the role and function of NYSE Floor Officials and adopted a new Rule 37, setting forth standards of dress and conduct for the NYSE equities trading Floor modeled on Rule 902NY.[6] As such, the second sentence of current Rule 902NY(c) is no longer applicable and the Exchange proposes to eliminate it.

In place of the obsolete reference, the Exchange proposes to revise Rule 902NY(c) to mirror language set forth in the analogous rule in place on the Exchange's affiliate NYSE Arca (''Arca''). Arca Rule 6.2–O (Admission to and Conduct on the Options Trading Floor), is substantially similar to Rule 902NY(c) in establishing standards of conduct and dress for persons while on the Arca options trading floors.[7] Consistent with Arca Rule 6.2–O(c), proposed 902NY(c), regarding ''Standards of Dress and Conduct,'' would establish that:

> All ATP Holders are required to act in a manner consistent with a fair and orderly market and with the maintenance of public confidence in the Exchange. *Accordingly, appropriate standards pertaining to dress and conduct on the Options Trading Floor, including, but not limited to, the following standards shall be observed:*'' (emphasis added).[8]

The Exchange is not proposing any other changes to the standards of dress and conduct expected of ATP Holders when on the Options Trading Floor.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, 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 rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by removing an obsolete reference (to the no longer used NYSE Floor Conduct Policy) and replacing this text with substantially identical text in the analogous rule on Arca, the Exchange affiliate options market. Moreover, the Exchange believes that by providing greater harmonization between Exchange rules and those of its affiliates that also have trading floors regarding access, conduct and decorum, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather relates to the removal of an outdated reference contained in rules regarding access, conduct and decorum on the Exchange's trading floor and replacing such reference with language that is consistent with that of the Exchange's affiliate options exchange—NYSE Arca, thus harmonizing rules across these exchanges.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The terms ''Floor'' and ''Trading Floor'' are defined in Rule 900.2NY(30) to mean ''the options trading floor located at 11 Wall Street, New York, NY.''

[5] *See* Rule 902NY(c).

[6] *See* Securities Exchange Act Release No. 94217 (February 10, 2022), 87 FR 8901 (February 16, 2022) (SR–NYSE–2021–73) (Order).

[7] *See* Rule 6.2–O(c) establishing the Standards of Dress and Conduct and requirement that ''[a]ll OTP Holders and OTP Firms are required to act in a manner consistent with a fair and orderly market and with the maintenance of public confidence in the Exchange. Accordingly, appropriate standards pertaining to dress and conduct on the Options Trading Floor, including, but not limited to, the following standards shall be observed:''

[8] *See* proposed Rule 902NY(c).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

*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 Act[11] and Rule 19b–4(f)(6) thereunder.[12] 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.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] 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 it can immediately remove an obsolete reference in Rule 902NY. The Commission is waiving the 30-day operative delay as the proposal raises no new or novel issue and would allow the Exchange to immediately update its rule text to avoid potential investor confusion. Thus, the Commission believes waiving the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[16]

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A)(iii). 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 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 Commission notes that the Exchange satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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) of the Act[17] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–26 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–2022–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–26 and should be submitted on or before July 18, 2022.

[17] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–13593 Filed 6–24–22; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95128; File No. SR–NYSENAT–2022–08]**

## Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company, Intercontinental Exchange, Inc.

June 21, 2022.

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 June 15, 2022, NYSE National, Inc. (''NYSE National'' or the ''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**

The Exchange proposes to amend the certificate of incorporation and bylaws of its ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes. 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 amend ICE's Fifth Amended and Restated Certificate of Incorporation (the ''ICE Certificate'') and Eighth Amended and Restated Bylaws (the ''ICE Bylaws'') to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes.

The Exchange proposes that the amendments would be effective upon the amended ICE Certificate being filed with the Secretary of State of the State of Delaware.

Eliminating Supermajority Voting Provisions

Certain of the amendments to the ICE Certificate would eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws. The changes are proposed in response to the receipt of a stockholder proposal on October 24, 2020 that was approved at ICE's Annual Stockholder Meeting on May 14, 2021. The changes subsequently were approved by the ICE Board of Directors on March 4, 2022, and by the ICE stockholders on May 13, 2022, in each case subject to filing with the Securities and Exchange Commission (''Commission'').

Under the current ICE Certificate, no adoption, amendment or repeal of any Bylaw by action of stockholders may be effective unless approved by the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon. The proposed changes would amend the ICE Certificate to eliminate this requirement. Instead, the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to adopt, amend or repeal any bylaw by action of stockholders. Article XI, Section 11.3 of the ICE Bylaws would continue to require that, so long as ICE directly or indirectly controls a national securities exchange, before any amendment or repeal of any provision of the ICE Bylaws may be effectuated, it shall be either (i) filed with or filed with and approved by the Commission, or (ii) submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission.

The current ICE Certificate also provides that the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon is required in order to amend or repeal Article V, (Limitations on Voting and Ownership), Article VI, Sections B (Number of Directors) or G (Considerations of the Board of Directors), Article IX (Stockholder Action), or Article X (Amendments), Clause (A). As a result of the proposed changes, in accordance with the General Corporation Law of the State of Delaware (''DGCL''), the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to amend the ICE Certificate.[4] Article X would continue to provide that, so long as ICE directly or indirectly controls a national securities exchange, any amendment or repeal of any provision of the ICE Certificate shall be submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission before such amendment or repeal may be effectuated.

To implement the change, the Exchange proposes to make the following amendments to the ICE Certificate:

- The first sentence of Article IX, Section C (Bylaws), would be revised as follows (proposed text underlined, proposed deletion bracketed):

[4] *See* Del. Code tit 8, § 242(b). The DGCL does not require a stockholder vote to change the corporate name or delete specific obsolete text. *See id.* and § 242(a)(1) and (7).

No adoption, amendment or repeal of a bylaw by action of stockholders shall be effective unless approved by the affirmative vote of the holders of [not less than 66 2/3%, or such higher percentage as may be specified in Section 11.2(b) of the bylaws of the Corporation,]a majority of the voting power of all outstanding shares of Common Stock and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class.

• Clause (A) would be deleted from the second sentence of Article X. The last sentence of the provision also would be deleted, since a vote of stockholders would no longer be required under the article as a result of the removal of Clause (A). The amended article would read as follows (proposed deletion bracketed):

Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, [(A) no provision of ARTICLE V, Section B or G of ARTICLE VI, ARTICLE IX or this clause (A) of ARTICLE X shall be amended, modified or repealed, and no provision inconsistent with any such provision shall become part of this Amended and Restated Certificate of Incorporation, unless such matter is approved by the affirmative vote of the holders of not less than 66⅔% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class; and (B)] for so long as this Corporation shall control, directly or indirectly, any Exchange, before any amendment or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, such amendment or repeal shall be submitted to the boards of directors of each Exchange (or the boards of directors of their successors), and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. [Any vote of stockholders required by this ARTICLE X shall be in addition to any other vote of the stockholders that may be required by law, this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.]

Calling Special Meetings

Under the current ICE Certificate and ICE Bylaws, holders of 50% of the outstanding shares of ICE common stock are entitled to call special meetings of stockholders so long as they satisfy certain procedural requirements. Stockholders are permitted to aggregate their holdings to reach the special meeting threshold and there is no aggregation cap or minimum duration of ownership requirement.

The proposed amendments to the ICE Certificate would change that requirement. The ICE Certificate would provide that special meetings of stockholders may be called at any time at the request of stockholders of record, so long as such stockholders hold at least 20% of the outstanding shares of ICE's common stock. The revised text would provide that the secretary of ICE would call the meeting only if they received a written request and the requesting stockholder complied with the requirements set forth in the relevant section of the ICE Certificate and ICE Bylaws as well as applicable law. Finally, that the final requirement applies to all four clauses would be clarified.

To implement the change, the Exchange proposes to amend Article VI, Section E (Power to Call Stockholder Meetings) of the ICE Certificate as follows (proposed text underlined, proposed deletions bracketed):

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Special meetings of stockholders of the Corporation may be called at any time by, but only by, (1) the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors then in office, (2) the Chair[man] of the Board of Directors, (3) the Chief Executive Officer of the Corporation or (4) [request of holders]the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of Common Stock ("Requesting Stockholder") representing in the aggregate at least [50]20% of the shares of Common Stock outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of ARTICLE V; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if such Requesting Stockholder complies with this Section E of ARTICLE VI, the bylaws of the Corporation and applicable law, in each case of clauses (1) through (4), to be held at such date, time and place, if any, either within or without the State of Delaware as may be stated in the notice of the meeting.

Because the special meeting provision in the ICE Bylaws likewise provides for a 50% ownership threshold, the ICE Bylaws would also be amended to lower the special meeting ownership threshold to 20%. Article II, Section 2.5 would be amended to set forth the procedures for calling a special meeting. The first paragraph would set forth the percentage threshold and timing of an email or mailed request. The remainder of Section 2.5 would set forth the informational requirements for a stockholder to request a special meeting, as well as procedural safeguards (such as ensuring that special meetings are called for lawful and appropriate purposes). It also would set forth the procedures for revoking a meeting request, whether by the requesting stockholder or the board of directors, what business may be transacted at the meeting, and what body will determine that the requesting stockholder has complied with the requirements of the section.

The specific changes would be as follows (proposed text underlined, proposed deletions bracketed):

2.5 Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called at any time by the Board of Directors, the Chair[man] of the Board, if any, or the Chief Executive Officer, or [at the request of holders of Common Stock] the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary by e-mail (with confirmation of receipt) or by registered mail addressed to the Secretary at the principal executive offices of the Corporation ("Acceptable Delivery Method") of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of the Corporation's common stock representing in the aggregate at least [50]20% (the "Special Meeting Requisite Percentage") of the shares of the Corporation's common stock[Common Stock] outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of Article V of the certificate of incorporation[. Such request shall state the purpose or purposes of the proposed meeting.]; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if (i) such

Requesting Stockholder complies with this Section 2.5, Section E of Article VI of the certificate of incorporation, and applicable law; (ii) such Requesting Stockholder continues to own the Special Meeting Requisite Percentage at all times between the date of the Special Meeting Request and the Stockholder Requested Special Meeting; and (iii) the Special Meeting Request complies with this Section 2.5. The date of any Stockholder Requested Special Meeting shall be no later than 90 days after the date that a Special Meeting Request that satisfies the requirements of this Section 2.5 is received by the Secretary (or, in the case of any litigation related to the validity of the Special Meeting Request, 90 days after the final, non-appealable resolution of such litigation).

(a) To be in proper form, a Special Meeting Request shall:

(i) bear the signature and the date of signature of the Requesting Stockholder and (A) in the case of any Requesting Stockholder that is a stockholder of record, set forth the name and address of such Requesting Stockholder as they appear in the Corporation's books and (B) in the case of any Requesting Stockholder that is a beneficial owner, set forth the name and the valid and current address of such Requesting Stockholder;

(ii) set forth a statement of the specific purpose or purposes of such Requesting Stockholder and the matters proposed to be acted on at such Stockholder Requested Special Meeting;

(iii) set forth the calculation of such Requesting Stockholder's shares of capital stock of the Corporation, including the number of shares owned beneficially and of record and disclosure of any short interests, derivative instruments, voting agreements or arrangements or other arrangements that impact the calculation thereof;

(iv) include an agreement by such Requesting Stockholder to notify the Corporation immediately in the case of any reduction prior to the record date for the Stockholder Requested Special Meeting of any shares of capital stock owned beneficially or of record by such Requesting Stockholder and an acknowledgement by such Requesting Stockholder that any such reduction shall be deemed a revocation of such Special Meeting Request to the extent of such reduction, such that the number of shares so reduced shall not be included in determining whether the Special Meeting Requisite Percentage has been reached and maintained; and

(v) include documentary evidence that such Requesting Stockholder own beneficially in the aggregate not less than the Special Meeting Requisite Percentage as of the date of such Special Meeting Request.

(b) Any Requesting Stockholder may revoke his, her or its Special Meeting Request at any time prior to the commencement of the applicable Stockholder Requested Special Meeting by revocation received by the Secretary in accordance with an Acceptable Delivery Method. If, following such revocation at any time before the commencement of such Stockholder Requested Special Meeting (including any revocation resulting from a reduction of shares), the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting. The first date on which valid Special Meeting Requests constituting not less than the Special Meeting Requisite Percentage shall have been received by the Corporation is referred to herein as the "Special Meeting Request Receipt Date".

(c) The Corporation will provide each Requesting Stockholder with notice of the record date for the determination of stockholders entitled to vote at the Stockholder Requested Special Meeting. Each Requesting Stockholder shall update the notice delivered and information previously provided to the Corporation pursuant to this Section 2.5, if necessary, so that the information provided or required to be provided in such notice shall continue to be true and correct (i) as of the record date for the Stockholder Requested Special Meeting and (ii) as of the date of the Stockholder Requested Special Meeting (or any adjournment, recess or postponement thereof), and such update shall be received by the Secretary in accordance with an Acceptable Delivery Method not later than five business days after the record date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the record date) and not later than the date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the date of such Stockholder Requested Special Meeting or any adjournment, recess or postponement thereof). If, pursuant to such update, the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting.

(d) In determining whether a Stockholder Requested Special Meeting has been requested by the record holders of shares representing in the aggregate at least the Special Meeting Requisite Percentage, multiple Special Meeting Requests received by the Secretary will be considered together only if each such Special Meeting Requests (i) identify identical or substantially similar items to be acted on at the Stockholder Requested Special Meeting as determined in good

faith by the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose) ("Special Meeting Similar Items") and (ii) have been dated and received by the Secretary within 60 days of the earliest date of such Special Meeting Requests. If the record holder is not the signatory to the Special Meeting Request, such Special Meeting Request will not be valid unless documentary evidence is supplied to the Secretary at the time of delivery of such Special Meeting Request of such signatory's authority to execute the Special Meeting Request on behalf of the record holder.

(e) Notwithstanding anything to the contrary, the Corporation shall not be required to convene a Stockholder Requested Special Meeting if:

(i) the demand for such special meeting does not comply with this Section 2.5;

(ii) the request relates to an item of business that is not a proper subject for action by a Requesting Stockholder under applicable law, rule or regulation;

(iii) the request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law;

(iv) the Special Meeting Request Receipt Date is during the period commencing 90 days prior to the first anniversary of the date of the preceding annual meeting of stockholders and ending on the date that is 30 days after the next annual meeting of stockholders;

(v) the item specified in the Special Meeting Request is not the election of directors and a Special Meeting Similar Item was presented at any meeting of stockholders held within 12 months prior to the Special Meeting Request Receipt Date;

(vi) a Special Meeting Similar Item consisting of the election or

removal of directors was presented at any meeting of stockholders held not more than 90 days before the Special Meeting Request Receipt Date (and, for purposes of this clause, the election or removal of directors shall be deemed a "Special Meeting Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); or

(vii) a Special Meeting Similar Item is included in the Corporation's notice as an item of business to be brought before a meeting of stockholders that is called for a date within 90 days after the Special Meeting Request Receipt Date.

(f) Business transacted at any Stockholder Requested Special Meeting shall be limited to (i) the purpose(s) stated in any valid Special Meeting Request received from the Requesting Stockholders and (ii) any additional matters that the Board of Directors determines to include in the Corporation's notice of the Stockholder Requested Special Meeting. If none of the Requesting Stockholders who submitted the Special Meeting Request appears or sends a qualified representative to present the matters to be presented for consideration that were specified in the Special Meeting Request, the Corporation need not present such matters for a vote at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(g) Compliance by a Requesting Stockholder with the requirements of this Section 2.5 shall be determined in good faith by the Board of Directors (or, to the extent expressly provided in this Section 2.5, any person to whom the Board of Directors has expressly delegated authority for such purpose).

BILLING CODE 8011–01–C

Additional Changes

The Exchange proposes to make certain non-substantive and conforming changes to the ICE Certificate and ICE Bylaws.

ICE Certificate

The DGCL provides that a certificate of incorporation shall be proposed by the directors and adopted by the stockholders if it restates the certificate, integrates any prior amendments, and makes amendments.[5] Accordingly, the second introductory paragraph of the ICE Certificate would state that the Sixth Amended and Restated Certificate of Incorporation (''Sixth Certificate'') restates, integrates, and further amends the provisions of the existing ICE Certificate, the Fifth Amended and Restated Certificate of Incorporation. Obsolete text stating that there was no discrepancy between the text of the current ICE Certificate and the Fourth Amended and Restated Certificates of Incorporation would be deleted. Similarly, the fourth introductory paragraph would state that the ICE Certificate was restated and integrated to read as set forth in the Sixth Certificate.

The Exchange proposes the following additional non-substantive and conforming changes:

- The proposed third and fourth introductory paragraphs would add references to Section 242 of the DGCL. Section 242 sets forth the manner that stockholder approval is effected.[6]
- References to the ''Fifth Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Sixth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.
- The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.
- ''Chairman'' would be updated to ''Chair'' in Article VI, Section E.

ICE Bylaws

The Exchange proposes the following non-substantive and conforming changes:

- References to the ''Eighth Amended and Restated Bylaws'' would be updated to refer to the ''Ninth Amended and Restated Bylaws.''
- The date of effectiveness would be updated.
- ''Chairman'' would be updated to ''Chair'' in Sections 2.5, 2.9, 2.11, 2.13(f), 3.6(b), 3.8 and 5.1. A reference to ''chairman'' would be updated to refer to ''chair'' in Section 2.15(a).
- To clarify that the notice of a special meeting referenced in Section 2.6 would be given by the Corporation, the text ''by the Corporation'' would be added to the first sentence, between ''shall be given'' and ''not fewer than.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[7] in general, and with Section 6(b)(1)[8] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that eliminating the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because the proposed change would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required, enabling the Exchange to continue to comply with the Exchange Act. The proposed change is designed to strengthen stockholder participation rights by allowing stockholders to amend the ICE Certificate and ICE Bylaws with simple majority voting.[9]

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change would affect the operations of the Exchange's ultimate parent and would not impact the governance or ownership of the Exchange. The proposed change would reduce the ownership threshold for special meetings of ICE stockholders, promoting stockholder engagement and participation.[10] At the same time, Proposed Section 2.5 of the ICE Bylaws would provide comprehensive guidance regarding any stockholder requested special meeting, setting forth the percentage threshold; required timing of an email or mailed stockholder request; informational requirements; procedural safeguards; procedures for revoking a meeting request; what business may be transacted at a meeting; and what body will determine that the requesting stockholder has complied with the requirements.

The proposed non-substantive and conforming changes would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency. The additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would similarly provide clarity and transparency by updating the documents.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Exchange Act[11] because the proposed rule change would be consistent with and would create a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market

[5] *See* Del. Code tit 8, § 245(b).

[6] *See* Del. Code tit 8, § 242.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a majority vote for any amendment at a meeting of stockholders. *See* Article XI, Section 11.1 of the By-laws of Nasdaq, Inc.

[10] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a special meeting of stockholders be called following the request by stockholders holding at least 15% of the outstanding stock entitled to vote on the matter. *See id.,* Article III, Section 3.2.

[11] 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, as stockholders and other stakeholders may view supermajority voting provisions as conflicting with principles of good corporate governance. The elimination of supermajority voting provisions in the ICE constituent documents may increase board accountability to stockholders and provide stockholders with greater ability to participate in the corporate governance of ICE. At the same time, existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required would not be amended, continuing the protection of investors and the public interest.

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because it would facilitate stockholder engagement while maintaining procedural safeguards against corporate waste, disruption and abuse by a small minority of stockholders. The Exchange believes that a 20% ownership threshold will help to ensure that special meetings are reserved for those extraordinary matters on which immediate action is deemed necessary by an appropriately large set of ICE's stockholders.

At the same time, by providing comprehensive guidance regarding any requested special meeting, the Exchange believes that the proposed change would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because the changes would provide clarity and transparency regarding the applicable requirements and which actors have authority to act under proposed Section 2.5 of the ICE Bylaws, allowing market participants to more easily understand and comply with the ICE Bylaws.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law. Similarly, the additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would provide clarity and transparency by updating the documents. The Exchange believes that the changes would thereby reduce potential confusion that may result from having an incorrect description or reference in the ICE Certificate or ICE Bylaws.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue or to amend the governing documents of the Exchange, but rather to (a) eliminate the supermajority voting provisions in for amending the ICE Certificate and ICE Bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make non-substantive and conforming changes. The proposed rule change does not impact the governance or ownership of the Exchange. It would not amend existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*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) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] 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 it may become operative immediately upon filing to allow ICE to implement the proposed changes as soon as possible. The Commission notes that the proposed changes would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would not impact the governance, ownership and regulation of the Exchange. Further, the proposed changes retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required.[18] Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[19]

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

[12] 15 U.S.C. 78(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] *See* Article X of the ICE Certificate and Article XI, Section 11.3, of the ICE Bylaws.

[19] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2022–08 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–NYSENAT–2022–08. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2022–08 and should be submitted on or before July 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95130; File No. SR–NYSECHX–2022–12]**

## Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company, Intercontinental Exchange, Inc. (''ICE'')

June 21, 2022.

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 June 15, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''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**

The Exchange proposes to amend the certificate of incorporation and bylaws of its ultimate parent company, Intercontinental Exchange, Inc., to eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and make certain non-substantive and conforming changes. 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 amend ICE's Fifth Amended and Restated Certificate of Incorporation (the ''ICE Certificate'') and Eighth Amended and Restated Bylaws (the ''ICE Bylaws'') to (a) eliminate the supermajority voting provisions for amending the certificate of incorporation and bylaws, (b) provide that special meetings of ICE's stockholders may be called at the request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make certain non-substantive and conforming changes.

The Exchange proposes that the amendments would be effective upon the amended ICE Certificate being filed with the Secretary of State of the State of Delaware.

Eliminating Supermajority Voting Provisions

Certain of the amendments to the ICE Certificate would eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws. The changes are proposed in response to the receipt of a stockholder proposal on October 24, 2020 that was approved at ICE's Annual Stockholder Meeting on May 14, 2021. The changes subsequently were approved by the ICE Board of Directors on March 4, 2022, and by the ICE stockholders on May 13, 2022, in each case subject to filing with the Securities and Exchange Commission (''Commission'').

Under the current ICE Certificate, no adoption, amendment or repeal of any Bylaw by action of stockholders may be effective unless approved by the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon. The proposed changes would amend the

[20] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

ICE Certificate to eliminate this requirement. Instead, the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to adopt, amend or repeal any bylaw by action of stockholders. Article XI, Section 11.3 of the ICE Bylaws would continue to require that, so long as ICE directly or indirectly controls a national securities exchange, before any amendment or repeal of any provision of the ICE Bylaws may be effectuated, it shall be either (i) filed with or filed with and approved by the Commission, or (ii) submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission.

The current ICE Certificate also provides that the affirmative vote of holders of not less than 66⅔% of the outstanding shares of common stock entitled to vote thereon is required in order to amend or repeal Article V, (Limitations on Voting and Ownership), Article VI, Sections B (Number of Directors) or G (Considerations of the Board of Directors), Article IX (Stockholder Action), or Article X (Amendments), Clause (A). As a result of the proposed changes, in accordance with the General Corporation Law of the State of Delaware (''DGCL''), the affirmative vote of the holders of a majority of the outstanding shares of common stock would be sufficient to amend the ICE Certificate.[4] Article X would continue to provide that, so long as ICE directly or indirectly controls a national securities exchange, any amendment or repeal of any provision of the ICE Certificate shall be submitted to the exchanges' boards of directors and, if so determined by one or more such board of directors, filed with or filed with and approved by the Commission before such amendment or repeal may be effectuated.

To implement the change, the Exchange proposes to make the following amendments to the ICE Certificate:

• The first sentence of Article IX, Section C (Bylaws), would be revised as follows (proposed text underlined, proposed deletion bracketed):

> No adoption, amendment or repeal of a bylaw by action of stockholders shall be effective unless approved by the affirmative vote of the holders of [not less than 66 2/3%, or such higher percentage as may be specified in Section 11.2(b) of the bylaws of the Corporation,]a majority of the voting power of all outstanding shares of Common Stock and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class.

• Clause (A) would be deleted from the second sentence of Article X. The last sentence of the provision also would be deleted, since a vote of stockholders would no longer be required under the article as a result of the removal of Clause (A). The amended article would read as follows (proposed deletion bracketed):

> Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, [(A) no provision of ARTICLE V, Section B or G of ARTICLE VI, ARTICLE IX or this clause (A) of ARTICLE X shall be amended, modified or repealed, and no provision inconsistent with any such provision shall become part of this Amended and Restated Certificate of Incorporation, unless such matter is approved by the affirmative vote of the holders of not less than 66⅔% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class; and (B)] for so long as this Corporation shall control, directly or indirectly, any Exchange, before any amendment or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, such amendment or repeal shall be submitted to the boards of directors of each Exchange (or the boards of directors of their successors), and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. [Any vote of stockholders required by this ARTICLE X shall be in addition to any other vote of the stockholders that may be required by law, this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.]

Calling Special Meetings

Under the current ICE Certificate and ICE Bylaws, holders of 50% of the outstanding shares of ICE common stock are entitled to call special meetings of stockholders so long as they satisfy certain procedural requirements. Stockholders are permitted to aggregate their holdings to reach the special meeting threshold and there is no aggregation cap or minimum duration of ownership requirement.

The proposed amendments to the ICE Certificate would change that requirement. The ICE Certificate would

[4] *See* Del. Code tit 8, § 242(b). The DGCL does not require a stockholder vote to change the corporate name or delete specific obsolete text. *See id.* and § 242(a)(1) and (7).

provide that special meetings of stockholders may be called at any time at the request of stockholders of record, so long as such stockholders hold at least 20% of the outstanding shares of ICE's common stock. The revised text would provide that the secretary of ICE would call the meeting only if they received a written request and the requesting stockholder complied with the requirements set forth in the relevant section of the ICE Certificate and ICE Bylaws as well as applicable law. Finally, that the final requirement applies to all four clauses would be clarified.

To implement the change, the Exchange proposes to amend Article VI, Section E (Power to Call Stockholder Meetings) of the ICE Certificate as follows (proposed text underlined, proposed deletions bracketed):

**BILLING CODE 8011–01–P**

Special meetings of stockholders of the Corporation may be called at any time by, but only by, (1) the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors then in office, (2) the Chair[man] of the Board of Directors, (3) the Chief Executive Officer of the Corporation or (4) [request of holders]the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of Common Stock ("Requesting Stockholder") representing in the aggregate at least [50]20% of the shares of Common Stock outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of ARTICLE V; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if such Requesting Stockholder complies with this Section E of ARTICLE VI, the bylaws of the Corporation and applicable law, in each case of clauses (1) through (4), to be held at such date, time and place, if any, either within or without the State of Delaware as may be stated in the notice of the meeting.

Because the special meeting provision in the ICE Bylaws likewise provides for a 50% ownership threshold, the ICE Bylaws would also be amended to lower the special meeting ownership threshold to 20%. Article II, Section 2.5 would be amended to set forth the procedures for calling a special meeting. The first paragraph would set forth the percentage threshold and timing of an email or mailed request. The remainder of Section 2.5 would set forth the informational requirements for a stockholder to request a special meeting, as well as procedural safeguards (such as ensuring that special meetings are called for lawful and appropriate purposes). It also would set forth the procedures for revoking a meeting request, whether by the requesting stockholder or the board of directors, what business may be transacted at the meeting, and what body will determine that the requesting stockholder has complied with the requirements of the section.

The specific changes would be as follows (proposed text underlined, proposed deletions bracketed):

2.5 Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called at any time by the Board of Directors, the Chair[man] of the Board, if any, or the Chief Executive Officer, or [at the request of holders of Common Stock] the secretary of the Corporation (the "Secretary") upon the receipt by the Secretary by e-mail (with confirmation of receipt) or by registered mail addressed to the Secretary at the principal executive offices of the Corporation ("Acceptable Delivery Method") of a written request (a "Special Meeting Request") by one or more stockholders of record holding as of the date of the Secretary's receipt of the Special Meeting Request shares of the Corporation's common stock representing in the aggregate at least [50]20% (the "Special Meeting Requisite Percentage") of the shares of the Corporation's common stock[Common Stock] outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of Article V of the certificate of incorporation[. Such request shall state the purpose or purposes of the proposed meeting.]; provided that a special meeting of stockholders requested by a Requesting Stockholder (a "Stockholder Requested Special Meeting") shall be called by the Secretary only if (i) such Requesting Stockholder complies with this Section 2.5, Section E of Article VI of the certificate of incorporation, and applicable law; (ii) such Requesting Stockholder continues to own the Special Meeting Requisite Percentage at all times between the date of the Special Meeting Request and the Stockholder Requested Special Meeting; and (iii) the Special Meeting Request complies with this Section 2.5. The date of any Stockholder Requested Special Meeting shall be

no later than 90 days after the date that a Special Meeting Request that satisfies the requirements of this Section 2.5 is received by the Secretary (or, in the case of any litigation related to the validity of the Special Meeting Request, 90 days after the final, non-appealable resolution of such litigation).

(a) To be in proper form, a Special Meeting Request shall:

(i) bear the signature and the date of signature of the Requesting Stockholder and (A) in the case of any Requesting Stockholder that is a stockholder of record, set forth the name and address of such Requesting Stockholder as they appear in the Corporation's books and (B) in the case of any Requesting Stockholder that is a beneficial owner, set forth the name and the valid and current address of such Requesting Stockholder;

(ii) set forth a statement of the specific purpose or purposes of such Requesting Stockholder and the matters proposed to be acted on at such Stockholder Requested Special Meeting;

(iii) set forth the calculation of such Requesting Stockholder's shares of capital stock of the Corporation, including the number of shares owned beneficially and of record and disclosure of any short interests, derivative instruments, voting agreements or arrangements or other arrangements that impact the calculation thereof;

(iv) include an agreement by such Requesting Stockholder to notify the Corporation immediately in the case of any reduction prior to the record date for the Stockholder Requested Special Meeting of any

shares of capital stock owned beneficially or of record by such Requesting Stockholder and an acknowledgement by such Requesting Stockholder that any such reduction shall be deemed a revocation of such Special Meeting Request to the extent of such reduction, such that the number of shares so reduced shall not be included in determining whether the Special Meeting Requisite Percentage has been reached and maintained; and

(v) include documentary evidence that such Requesting Stockholder own beneficially in the aggregate not less than the Special Meeting Requisite Percentage as of the date of such Special Meeting Request.

(b) Any Requesting Stockholder may revoke his, her or its Special Meeting Request at any time prior to the commencement of the applicable Stockholder Requested Special Meeting by revocation received by the Secretary in accordance with an Acceptable Delivery Method. If, following such revocation at any time before the commencement of such Stockholder Requested Special Meeting (including any revocation resulting from a reduction of shares), the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting. The first date on which valid Special Meeting Requests constituting not less than the Special Meeting Requisite Percentage shall have been received by the Corporation is referred to herein as the "Special Meeting Request Receipt Date".

(c) The Corporation will provide each Requesting Stockholder with notice of the record date for the determination of stockholders entitled to vote at the Stockholder Requested Special Meeting. Each Requesting Stockholder shall update the notice delivered and information previously provided to the Corporation pursuant to this Section 2.5, if necessary, so that the information provided or required to be provided in such notice shall continue to be true and correct (i) as of the record date for the Stockholder Requested Special Meeting and (ii) as of the date of the Stockholder Requested Special Meeting (or any adjournment, recess or postponement thereof), and such update shall be received by the Secretary in accordance with an Acceptable Delivery Method not later than five business days after the record date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the record date) and not later than the date for such Stockholder Requested Special Meeting (in the case of an update required to be made as of the date of such Stockholder Requested Special Meeting or any adjournment, recess or postponement thereof). If, pursuant to such update, the unrevoked valid Special Meeting Requests represent in the aggregate less than the Special Meeting Requisite Percentage, the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose), in its discretion, may cancel the Stockholder Requested Special Meeting.

(d) In determining whether a Stockholder Requested Special Meeting has been requested by the record holders of shares representing in the aggregate at least the Special Meeting Requisite Percentage, multiple Special Meeting

Requests received by the Secretary will be considered together only if each such Special Meeting Requests (i) identify identical or substantially similar items to be acted on at the Stockholder Requested Special Meeting as determined in good faith by the Board of Directors (or any person to whom the Board of Directors has expressly delegated authority for such purpose) ("Special Meeting Similar Items") and (ii) have been dated and received by the Secretary within 60 days of the earliest date of such Special Meeting Requests. If the record holder is not the signatory to the Special Meeting Request, such Special Meeting Request will not be valid unless documentary evidence is supplied to the Secretary at the time of delivery of such Special Meeting Request of such signatory's authority to execute the Special Meeting Request on behalf of the record holder.

(e) Notwithstanding anything to the contrary, the Corporation shall not be required to convene a Stockholder Requested Special Meeting if:

(i) the demand for such special meeting does not comply with this Section 2.5;

(ii) the request relates to an item of business that is not a proper subject for action by a Requesting Stockholder under applicable law, rule or regulation;

(iii) the request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law;

(iv) the Special Meeting Request Receipt Date is during the period commencing 90 days prior to the first anniversary of the date of the

preceding annual meeting of stockholders and ending on the date that is 30 days after the next annual meeting of stockholders;

(v) the item specified in the Special Meeting Request is not the election of directors and a Special Meeting Similar Item was presented at any meeting of stockholders held within 12 months prior to the Special Meeting Request Receipt Date;

(vi) a Special Meeting Similar Item consisting of the election or removal of directors was presented at any meeting of stockholders held not more than 90 days before the Special Meeting Request Receipt Date (and, for purposes of this clause, the election or removal of directors shall be deemed a "Special Meeting Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); or

(vii) a Special Meeting Similar Item is included in the Corporation's notice as an item of business to be brought before a meeting of stockholders that is called for a date within 90 days after the Special Meeting Request Receipt Date.

(f) Business transacted at any Stockholder Requested Special Meeting shall be limited to (i) the purpose(s) stated in any valid Special Meeting Request received from the Requesting Stockholders and (ii) any additional matters that the Board of Directors determines to include in the Corporation's notice of the

Stockholder Requested Special Meeting. If none of the Requesting Stockholders who submitted the Special Meeting Request appears or sends a qualified representative to present the matters to be presented for consideration that were specified in the Special Meeting Request, the Corporation need not present such matters for a vote at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(g) Compliance by a Requesting Stockholder with the requirements of this Section 2.5 shall be determined in good faith by the Board of Directors (or, to the extent expressly provided in this Section 2.5, any person to whom the Board of Directors has expressly delegated authority for such purpose).

BILLING CODE 8011–01–C

Additional Changes

The Exchange proposes to make certain non-substantive and conforming changes to the ICE Certificate and ICE Bylaws.

ICE Certificate

The DGCL provides that a certificate of incorporation shall be proposed by the directors and adopted by the stockholders if it restates the certificate, integrates any prior amendments, and makes amendments.[5] Accordingly, the second introductory paragraph of the ICE Certificate would state that the Sixth Amended and Restated Certificate of Incorporation (''Sixth Certificate'') restates, integrates, and further amends the provisions of the existing ICE Certificate, the Fifth Amended and Restated Certificate of Incorporation. Obsolete text stating that there was no discrepancy between the text of the current ICE Certificate and the Fourth Amended and Restated Certificates of Incorporation would be deleted. Similarly, the fourth introductory paragraph would state that the ICE Certificate was restated and integrated to read as set forth in the Sixth Certificate.

The Exchange proposes the following additional non-substantive and conforming changes:

- The proposed third and fourth introductory paragraphs would add references to Section 242 of the DGCL. Section 242 sets forth the manner that stockholder approval is effected.[6]
- References to the ''Fifth Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Sixth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.
- The time and date of effectiveness and execution in the introductory certifications and signature line would be updated.
- ''Chairman'' would be updated to ''Chair'' in Article VI, Section E.

ICE Bylaws

The Exchange proposes the following non-substantive and conforming changes:

- References to the ''Eighth Amended and Restated Bylaws'' would be updated to refer to the ''Ninth Amended and Restated Bylaws.''
- The date of effectiveness would be updated.
- ''Chairman'' would be updated to ''Chair'' in Sections 2.5, 2.9, 2.11, 2.13(f), 3.6(b), 3.8 and 5.1. A reference to ''chairman'' would be updated to refer to ''chair'' in Section 2.15(a).
- To clarify that the notice of a special meeting referenced in Section 2.6 would be given by the Corporation, the text ''by the Corporation'' would be added to the first sentence, between ''shall be given'' and ''not fewer than.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[7] in general, and with Section 6(b)(1)[8] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that eliminating the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions

[5] *See* Del. Code tit 8, § 245(b).

[6] *See* Del. Code tit 8, § 242.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because the proposed change would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required, enabling the Exchange to continue to comply with the Exchange Act. The proposed change is designed to strengthen stockholder participation rights by allowing stockholders to amend the ICE Certificate and ICE Bylaws with simple majority voting.[9]

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change would affect the operations of the Exchange's ultimate parent and would not impact the governance or ownership of the Exchange. The proposed change would reduce the ownership threshold for special meetings of ICE stockholders, promoting stockholder engagement and participation.[10] At the same time, Proposed Section 2.5 of the ICE Bylaws would provide comprehensive guidance regarding any stockholder requested special meeting, setting forth the percentage threshold; required timing of an email or mailed stockholder request; informational requirements; procedural safeguards; procedures for revoking a meeting request; what business may be transacted at a meeting; and what body will determine that the requesting stockholder has complied with the requirements.

The proposed non-substantive and conforming changes would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency. The additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would similarly provide clarity and transparency by updating the documents.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Exchange Act [11] because the proposed rule change would be consistent with and would create a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to eliminate the supermajority voting provisions for amending the ICE Certificate and ICE Bylaws would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, as stockholders and other stakeholders may view supermajority voting provisions as conflicting with principles of good corporate governance. The elimination of supermajority voting provisions in the ICE constituent documents may increase board accountability to stockholders and provide stockholders with greater ability to participate in the corporate governance of ICE. At the same time, existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required would not be amended, continuing the protection of investors and the public interest.

The Exchange believes that reducing the percentage of the holders of common stock needed to call a special meeting would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because it would facilitate stockholder engagement while maintaining procedural safeguards against corporate waste, disruption and abuse by a small minority of stockholders. The Exchange believes that a 20% ownership threshold will help to ensure that special meetings are reserved for those extraordinary matters on which immediate action is deemed necessary by an appropriately large set of ICE's stockholders.

At the same time, by providing comprehensive guidance regarding any requested special meeting, the Exchange believes that the proposed change would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because the changes would provide clarity and transparency regarding the applicable requirements and which actors have authority to act under proposed Section 2.5 of the ICE Bylaws, allowing market participants to more easily understand and comply with the ICE Bylaws.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that the proposed changes would ensure that the ICE Certificate correctly describes its proposed restatement, integration and amendment and references the DGCL in accordance with the requirements of Delaware law. Similarly, the additional proposed non-substantive and conforming changes to the ICE Certificate and ICE Bylaws would provide clarity and transparency by updating the documents. The Exchange believes that the changes would thereby reduce potential confusion that may result from having an incorrect description or reference in the ICE Certificate or ICE Bylaws.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue or to amend the governing documents of the Exchange, but rather to (a) eliminate the supermajority voting provisions in for amending the ICE Certificate and ICE Bylaws, (b) provide that special meetings of ICE's stockholders may be called at the

[9] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a majority vote for any amendment at a meeting of stockholders. *See* Article XI, Section 11.1 of the By-laws of Nasdaq, Inc.

[10] The proposed change would be consistent with the By-laws of Nasdaq, Inc., which require a special meeting of stockholders be called following the request by stockholders holding at least 15% of the outstanding stock entitled to vote on the matter. *See id.,* Article III, Section 3.2.

[11] 15 U.S.C. 78f(b)(5).

request of holders of in the aggregate at least 20% of the outstanding shares of ICE's common stock, and (c) make non-substantive and conforming changes. The proposed rule change does not impact the governance or ownership of the Exchange. It would not amend existing provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*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) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] 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 it may become operative immediately upon filing to allow ICE to implement the proposed changes as soon as possible. The Commission notes that the proposed changes would affect the operations of the Exchange's ultimate parent, not the Exchange itself, and would not impact the governance, ownership and regulation of the Exchange. Further, the proposed changes retain without amendment the provisions regarding filing any proposed amendments of the ICE Certificate or ICE Bylaws with the Commission and obtaining Commission approval where required.[18] Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2022–12 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–NYSECHX–2022–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2022–12 and should be submitted on or before July 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–13590 Filed 6–24–22; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] *See* Article X of the ICE Certificate and Article XI, Section 11.3, of the ICE Bylaws.

[19] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12), (59).

## SMALL BUSINESS ADMINISTRATION

**[License No. 01/01–0412]**

### Surrender of License of Small Business Investment Company; North Atlantic SBIC IV, L.P.

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/01–0412 issued to North Atlantic SBIC

IV, LP, said license is hereby declared null and void.

**Bailey DeVries,**

*Associate Administrator, Office of Investment and Innovation.*

[FR Doc. 2022–13625 Filed 6–24–22; 8:45 am]

**BILLING CODE 8026–03–P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** 30-Day notice.

**SUMMARY:** The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested members of the public an additional 30 days to provide comments on the proposed collection of information.

**DATES:** Submit comments on or before July 27, 2022.

**ADDRESSES:** Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov,* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** SBA's Office of Credit Risk Management (OCRM) is responsible for the oversight and supervision of the SBA operations of over 3100 7(a) Lenders, Certified Development Companies (''CDCs''), and Microloan Intermediaries (''Intermediaries'') that participate in SBA's business loan programs and is responsible for enforcement of the applicable rules and regulations. Currently, the Agency guarantees more than $110 billion dollars in small business loans through these programs.[1] The information collection described in detail below helps OCRM protect the safety and soundness of the business loan programs and taxpayer dollars.

In general, SBA collects information in connection with reviews for Federally-regulated 7(a) Lenders, CDCs, and SBA Supervised Lenders including Small Business Lending Companies (SBLCs) and Non-Federally Regulated Lenders (NFRLs).[2] SBA also requests certain information when it conducts Microloan Intermediary Site Visits. The discussion below identifies the nature of the information to be collected for each type of lender and the related review or examination. In addition, SBA has created separate lists, which are also discussed below, to clearly identify the information to be collected.

#### I. 7(a) Lender Diagnostic, Limited Scope, Limited Scope (Targeted) Reviews; CDC SMART Analytical and Full Reviews; and Supervised Lender Safety and Soundness Exams

*A. Common Information Collected*

For all reviews, and Safety and Soundness examinations[3] of 7(a) Lenders and CDCs, as applicable, in general, SBA requests information related to the 7(a) Lender's or CDC's management and operation, eligibility of its SBA loans for SBA guaranty, compliance with SBA Loan Program Requirements, credit administration, and performance of its SBA loan portfolio.

1. *Management and Operations:* The information requested generally includes the SBA program organization chart with responsibilities, business plan, financial and program audits, evidence of Lender compliance with regulatory orders and agreements (if applicable and as appropriate), and staff training on SBA lending.

2. *Eligibility and Credit Administration:* In reviewing these areas, SBA may request the Lender's or CDC's credit policies and procedures; servicing policies and procedures; loan sample files; independent loan reviews; underwriting, loan credit scoring, risk rating methodologies; and information on loans approved as exceptions to policy.

3. *Compliance with Loan Program Requirements:* Here, SBA generally collects information on services and fees charged for Lenders' third-party vendors,[4] Lender's FTA[5] trust account, and Lender's use of the System for Awards Management to perform agent due diligence. For CDCs, SBA collects additional information related to Loan Program Requirements as described below in Section I.C.

4. *Portfolio Performance:* In considering Lender or CDC portfolio performance, SBA may request that lenders provide a listing of loans indicating those past due, those with servicing actions, individual risk ratings, and those in liquidation or purchased for SBA to compare with SBA data. SBA may also request that lenders provide an explanation for risks identified (*e.g.,* identified by higher risk metrics or PARRiS flags triggered).

Further detail on the information SBA collects in reviews, and Safety and Soundness Exams is contained in the SBA Supervised Lender Safety and Soundness Examination/Full Review Information Request; 7(a) Lender Diagnostic Review Request; 7(a) Lender Limited Scope Review Request; 7(a) Lender Limited Scope (Targeted) Review Request; CDC SMART Analytical Review Information Request; and CDC SMART Full Review Information Request. Each Information Request document is available upon request.

*B. SBA Supervised Lender Supplemental Information for Safety and Soundness Exams*

SBA is the primary Federal regulator for SBA licensed SBLCs and NFRLs that participate in the 7(a) program.[6] Because SBA is the primary Federal regulator, SBA performs comprehensive exams that require information in addition to that referenced in Section I.A. Specifically, for SBA Supervised Lender examinations, SBA additionally requests corporate governance

[1] These numbers do not include over 5,000 lenders that participated in the Paycheck Protection Program (PPP) that issued approximately 11.8 million guaranteed, forgivable loans for $800 billion.

[2] SBLCs and NFRLs are defined in 15 U.S.C. 632(r) and 13 CFR 120.10.

[3] Safety and Soundness Examinations are only performed on SBA Supervised Lenders in the 7(a) program. SBA Supervised Lenders include SBA licensed Small Business Lending Companies and Non-Federally Regulated Lenders as defined in 13 CFR 120.10. Analytical Reviews and Full Reviews are performed on 7(a) Lenders and CDCs.

[4] For purposes of this notice, Third-party vendors include, for example, Loan Agents (*e.g.,* Packagers and Lender Service Providers) and Professional Managers with management contracts.

[5] FTA refers to SBA's Fiscal and Transfer Agent. 7(a) Lenders that sell SBA loans in the Secondary Market are required by the terms of the Form 1086, Secondary Participation Guaranty Agreement, to deposit the guaranteed portion of loan payments in a segregated account for the benefit of investors.

[6] SBA Supervised Lenders are a relatively small subset of 7(a) Lenders. 7(a) Lenders include SBA Supervised Lenders and 7(a) Lenders with a Federal Financial Institution Regulator as defined by 13 CFR 120.10 (*i.e.,* lenders regulated by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board, the National Credit Union Administration, and/or the Farm Credit Administration).

documents and information on the Lender's financial condition, internal controls, and risk mitigation. SBA also requests information on higher risk loans, payments related to loans in loan sample, fidelity insurance, credit scoring model validation and lender self-testing for compliance with SBA Loan Program Requirements. SBA Supervised Lender safety and soundness examinations include review of capital, earnings, and liquidity in accordance with 13 CFR 120.1050(b) and accordingly, SBA requests information on the lender's financing, asset account calculations, and dividend policy. Further detail on the information that SBA requests for SBA Supervised Lender examinations is contained in SBA Supervised Lender Safety and Soundness Examination/Full Review Information Request. This document is available upon request.

*C. CDC Supplemental Information*

SBA is also the primary Federal regulator for CDCs. SBA guarantees 100% of 504 program debentures. Therefore, SBA also requests additional information to prudently oversee CDCs, as it does for SBA Supervised Lenders. The additional information generally requested includes corporate governance documents and information on Lenders' financial condition, internal controls and risk mitigation practices, and the CDC's plan for investment in other local economic development. In addition, SBA requests, as applicable, information on a CDC's Premier Certified Lenders Program (PCLP) Loan Loss Reserve Account and loans that a CDC packages for other 7(a) lenders. You may request a copy of the CDC SMART Analytical Review Information Request and CDC SMART Full Review Information Request for more details on this supplemental information request.

**II. 7(a) Lender and CDC Delegated Authority Reviews**

SBA collects information for Delegated Authority Reviews performed, in general, every two years for lenders applying or reapplying to SBA's Delegated Authority Programs. Delegated Authority programs include for example; the Preferred Lender Program (PLP) for 7(a) Lenders and Accredited Lender Program (ALP) or PCLP for CDCs.[7] If a lender is scheduled to receive a review or a Safety and Soundness Examination during the same review cycle as a Delegated Authority Review, generally SBA will coordinate the timing of the reviews and the related information collections to lessen the burden.

For 7(a) delegated authority reviews, SBA may request information on (for example) organizational changes, staff training and experience, lender explanation for risk indicators triggered, Lender risk mitigation efforts, Lender's financial condition, Lender's deficiencies underlying regulatory orders (if applicable and as appropriate), and loan sample files (as requested).

For CDC delegated authority reviews, SBA requests corporate governance documents and additional information on organization/staff, financial condition, internal controls and risk mitigation. SBA also requests a CDC's policies including its no-adverse-change determination, loan reviews, and lender explanation for its higher risk metrics.

For more detail on Delegated Authority Review collections, you may request a copy of the 7(a) Lender Nomination and Renewal for Delegated Authority Information Requests and/or the ALP/PCLP Renewal Guide and Information Request.

**III. Microloan Intermediary Reviews**

For Microloan Program Intermediary oversight, SBA District Offices perform an annual site visit for active Intermediaries. SBA requests information, for example, on SBA program management and operations including organizational chart with responsibilities, contact information, Promissory notes, and credit policies and procedures. SBA primarily reviews the Intermediary's credit administration through a loan sample file request. Specifics on the information collected are contained in SBA's Microloan Intermediary Site Visit/Review Information Request document, a copy of which is available upon request.

**IV. Other Reviews, Corrective Action Plans, and Increased Supervision for 7(a) Lenders, CDCs, and Intermediaries**

SBA may pose additional information requests for its Other Reviews,[8] generally of higher risk lenders. For example, for 7(a) Lenders under a public regulatory order or agreement, SBA may request information relating to the status of the underlying deficiencies, as appropriate, or request loan files for SBA to review to mitigate risk before the loan can be sold into the secondary market. SBA may also conduct reviews of higher risk lenders that utilize Lender Service Providers or Loan Agents requesting information for example on fees, service agreements, and activities performed. SBA may also request corrective action plans from lenders following reviews where findings and deficiencies are identified. Finally, SBA may request additional information of lenders under increased supervision. However, information requests for increased supervision tend to be lender specific.

In general, for information that has already been provided by a 7(a) Lender, a CDC, or a Microloan Intermediary but is unchanged, a lender may certify that the information was already provided and is unchanged in lieu of resubmitting the information. The certification must also state to whom and on what date the information was provided to SBA.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

*OMB Control No.:* 3245–0365.

*Title:* SBA Lender and Microloan Intermediary Reporting Requirements.

*Description of Respondents:* 7(a) Lenders (including SBA Supervised Lenders), Certified Development Companies, and Microloan Intermediaries.

*Estimated Number of Respondents:* 1,985.

*Estimated Annual Responses:* 2,083.

*Estimated Annual Hour Burden:* 17,279.

**Curtis B. Rich,**

*Agency Clearance Officer.*

[FR Doc. 2022–13597 Filed 6–24–22; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17489 and #17490; Montana Disaster Number MT–00158]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Montana

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

[7] Through SBA's Delegated Authority programs, qualified lenders may process SBA loans with further autonomy and reduced paperwork than through regular SBA loan processing.

[8] Other Reviews may include, for example, Secondary Market loan reviews, reviews of lender self-assessments, or Agreed Upon Procedures Reviews performed by third-party practitioners or an independent office within the Lender to which SBA and the Lender agree, that follow a review protocol as prescribed or approved by SBA.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA–4655–DR), dated 06/16/2022.

*Incident:* Severe Storm and Flooding.

*Incident Period:* 06/10/2022 and continuing.

**DATES:** Issued on 06/16/2022.

*Physical Loan Application Deadline Date:* 08/15/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/16/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/16/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Carbon, Park, Stillwater

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere ... | 1.875 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |

The number assigned to this disaster for physical damage is 17489 6 and for economic injury is 17490 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Joshua Barnes,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2022–13617 Filed 6–24–22; 8:45 am]

**BILLING CODE 8026–09–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. AB 1313]**

### Great Redwood Trail Agency—Adverse Discontinuance of Lease & Operating Authority—Northwestern Pacific Railway Co., in Humboldt, Trinity and Mendocino Counties, Cal.

On June 7, 2022, the Great Redwood Trail Agency (GRTA), formerly known as North Coast Railroad Authority (NCRA),[1] filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (the Board) authorize the third-party, or ''adverse,'' discontinuance of operating authority held by Northwestern Pacific Railway Company (NWPY) over a GRTA rail line extending from milepost 142.5, at Outlet Station, to the end of the line at milepost 300.5,[2] on the Samoa Branch, including the Korblex Branch and the Carlotta Branch in Mendocino, Trinity, and Humboldt Counties, Cal.[3] (the Line). The Line traverses U.S. Postal Service Zip Codes 95429, 95595, 95454, 95542, 95560, 95559, 95553, 95571, 95569, 95565, 95562, 95540, 95551, 95537, 95564, 95524, 95521, 95519, 95525, 95501, 95503, 95526, 95514, 95511, and 95490.

GRTA explains that it acquired the Line in 1992 from the Eureka Southern Railroad, *see N. Coast R.R. Auth.—Acquis. & Operation Exemption—Eureka S. R.R.,* FD 32052 (ICC served Apr. 23, 1992), and that, thereafter, NWPY sought authority to lease and operate the Line, *see Nw. Pac. Ry.—Lease & Operation Exemption—N. Coast R.R. Auth.,* FD 33998 (STB served Feb. 6, 2001). GRTA asserts that NWPY's lease terminated in 2005, that NWPY's business status is listed by the California secretary of state as ''forfeited,'' and that John Darling, NWPY's longtime principal and last stated agent for service of process, died in 2010.[4] Thus, GRTA now seeks adverse discontinuance of NWPY's operating authority over the Line.

In a decision served in this proceeding on March 4, 2022, GRTA was granted exemptions from several statutory provisions as well as waivers of certain Board regulations that the Board concluded were inapplicable and unneeded in connection with GRTA's anticipated application.

According to GRTA, the Line may contain federally granted rights-of-way, and any documentation in GRTA's possession will be made available promptly to those requesting it. GRTA's entire case for discontinuance was filed with the application.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

Any interested person may file comments concerning the proposed adverse discontinuance or protests (including protestant's entire opposition case) by July 22, 2022. Persons who may oppose the proposed adverse discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR 1152.25. GRTA's reply is due by August 8, 2022.

All pleadings, referring to Docket No. AB 1313, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on GRTA's representative, Charles H. Montange, Law Offices of Charles H. Montange, 426 NW 162nd Street, Seattle, WA 98177. Except as otherwise set forth in 49 CFR part 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding. 49 CFR 1104.12(a).

[1] GRTA notes its name was changed from NCRA to GRTA effective March 1, 2022. (GRTA Appl. 2 n.1.) The proceeding has been recaptioned accordingly.

[2] GRTA previously stated that it sought discontinuance of NWPY's operating authority to milepost 302.86. (Pet. 2.) However, the Board has since found that that the track extending between milepost 300.5 and milepost 302.86 is ancillary track that was never subject to the agency's regulatory authority. *See N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal.,* AB 1305X, slip op. at 6 (STB served May 17, 2022).

[3] In a separate docket, GRTA received authority to abandon approximately 169.61 miles extending between milepost 139.5, near Willits and milepost 284.1, near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, and milepost 300.5 near Samoa. The Board noted, however, that GRTA may not consummate the abandonment until all operating authority on the Line has been terminated. *See N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal.,* AB 1305X, slip op. at 4 n.6 (STB served May 20, 2022).

[4] According to GRTA, NWPY never provided freight rail service or any other operations on the Line due to, among other things, an emergency order imposed by the Federal Railroad Administration prohibiting railroad operations on the Line. *See Nw. Pac. R.R.; Emergency Ord. to Prevent Operation of Trains on Nw. Pac. R.R.'s Trackage from Arcata, Cal. to Milepost 63.4 Between Schellville & Napa Junction, Cal.,* 63 FR 67,976 (Dec. 9, 1998).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

Board decisions and notices are available at *www.stb.gov.*

Decided: June 17, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Regena Smith-Bernard,**

*Clearance Clerk.*

[FR Doc. 2022–13670 Filed 6–24–22; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2022–0553; Summary Notice No. 2022–28]**

### Petition for Exemption; Summary of Petition Received; Trans Executive Airlines of Hawaii d/b/a Transair Express

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before July 18, 2022.

**ADDRESSES:** Send comments identified by docket number FAA–2022–0553 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Andrew Thai at (202) 267–0175, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

**Timothy R. Adams,**

*Deputy Executive Director, Office of Rulemaking.*

#### Petition for Exemption

*Docket No.:* FAA–2022–0553.

*Petitioner:* Trans Executive Airlines of Hawaii d/b/a Transair Express.

*Section(s) of 14 CFR Affected:* § 60.17.

*Description of Relief Sought:* Transair Express and several other operators continue to operate the SD3–60 aircraft, but there is only one remaining SD3–60 flight simulator in operation. Once withdrawn from operation, and without a suitable FAA-certified simulator available, FAA-certified SD3–60 operators would be forced to conduct required flight crew training onboard aircraft during flights. This situation would negatively impact aviation safety, increase public risk, and ultimately degrade readiness for U.S. and allied military customers. Transair Express therefore seeks an exemption from certain requirements of 14 CFR part 60 to enable the continuing qualification of the SD3–60 flight simulator and an extension of the time period allowed to requalify the simulator to March 31, 2023. The grant of this exemption will allow Transair Express and other SD3–60 operators to continue to provide training for their flight crews and provide access to training to other FAA-certified Shorts SD3–60 operators.

[FR Doc. 2022–13601 Filed 6–24–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2022–0527; Summary Notice No.—2022–27]**

### Petition for Exemption; Summary of Petition Received; Atlas Air, Inc.

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before July 18, 2022.

**ADDRESSES:** Send comments identified by docket number FAA–2022–0527 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal

information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean O'Tormey at 202–267–4044, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

**Timothy R. Adams,**

*Deputy Executive Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2022–0527.

*Petitioner:* Atlas Air, Inc.

*Section(s) of 14 CFR Affected:* 121.368(h).

*Description of Relief Sought:* Petitioner seeks an exemption from 14 CFR 121.368(h) so that it may maintain and update its maintenance provider list by listing all of its contract maintenance providers and the principal address where the contract maintenance provider performs maintenance, or is based in the case of contract flight mechanics, and all of the locations, by physical address or airport code, where maintenance is carried out for Atlas and a description of the type of maintenance, preventative maintenance, or alteration that is performed there.

[FR Doc. 2022–13600 Filed 6–24–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2018–0106; Notice 2]**

### Daimler Vans USA, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of petition denial.

**SUMMARY:** Daimler Vans USA, LLC, (Daimler Vans) on behalf of Daimler AG, has determined that certain model year (MY) 2016–2018 Mercedes-Benz Metris vans do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less.* Daimler Vans filed a noncompliance report dated October 24, 2018, and later amended it on November 9, 2018. Daimler Vans also petitioned NHTSA on November 9, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces and explains the denial of Daimler Vans' petition.

**FOR FURTHER INFORMATION CONTACT:** Ahmad Barnes, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366–7236.

**SUPPLEMENTARY INFORMATION:**

*I. Overview:* Daimler Vans has determined that certain MY 2016–2018 Mercedes-Benz Metris vans do not fully comply with paragraphs S4.2.2.2 of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less* (49 CFR 571.110). Daimler Vans filed a noncompliance report dated October 24, 2018, and later amended it on November 9, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Daimler Vans also petitioned NHTSA on November 9, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Daimler Vans' petition was published with a 30-day public comment period, on September 16, 2019, in the **Federal Register** (84 FR 48702). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov.* Then follow the online search instructions to locate docket number ''NHTSA–2018–0106.''

*II. Vehicles Involved:* Approximately 24,438 MY 2016–2018 Mercedes Benz-Metris vans, manufactured between June 1, 2016, and September 28, 2018, are potentially involved.

*III. Noncompliance:* Manufacturers are permitted to install passenger car tires on a multipurpose passenger vehicle (MPV), truck, bus, or trailer. However, when passenger car tires are used in one of these other light vehicle applications, paragraph S4.2.2.2 of FMVSS No. 110, provides that each tire's maximum load rating is to be reduced by dividing it by a factor of 1.10 before the manufacturer determines the maximum load ratings of the tires fitted to each axle. For the equipped tires on the Daimler Vans, the pre S4.2.2.2 adjustment tire specifications (based on a tire load rating with a load index of 101) yields a load capacity of 825 kg (1,818 pounds) per tire and 1,650 kg (3,637 pounds) per axle. Specifically, the subject vehicles were certified with a maximum load rating of 775 kg (1,708 pounds) per tire or 1,550 kg (3,417 pounds) combined per axle. However, after dividing each tire specification tire capacity value by 1.1 and thereby reducing the maximum load rating, the tires on the subject vehicles have an adjusted maximum load rating of 750 kg (1,653pounds) per tire and 1,500 kg (3,307 pounds) per axle—values below the certified GAWR (Gross Axle Weight Rating) for the front and rear axles.

*IV. Rule Requirements:* Paragraphs S4.2.2.1 and S4.2.2.2 of FMVSS No. 110 include the requirements relevant to this petition. Section S4.2.2.1 requires the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. Section S4.2.2.2, further requires that when passenger car tires are installed on an MPV, truck, bus, or trailer, each tire's load rating is reduced by dividing it by 1.10 before determining, under paragraph S4.2.2.1, the sum of the maximum load ratings of the tires fitted to an axle.

*V. Summary of Daimler Van's Petition:* The following views and arguments presented in this section, ''V. Summary of Daimler Vans' Petition,'' are the views and arguments provided by Daimler Vans and do not reflect the views of the Agency. In its petition, Daimler Vans describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety for the following reasons:

1. There is no safety risk posed with this noncompliance because the tires are designed to carry significantly more than the GAWR listed on the certification label.

2. The Metris vans also have installed the same tire size as the Metris vans sold in Europe that have the same axle weight ratings and those vehicles have performed without incident for years.

3. Despite the discrepancy in calculating the maximum load rating, the Metris vans are more than able to accommodate additional weight loaded onto the vehicle. Per the specifications provided by the tire supplier, based on the tire's load index rating of 101, each tire, in fact, has a maximum load rating of 825 kg (1,818 pounds) per tire and a combined maximum load rating of 1,650 kg (3,637 pounds) per axle. Thus, the tires were designed and manufactured to safely and effectively manage weights that are well beyond the GAWR for each axle.

4. The GAWR listed on the vehicle certification label is accurate so that a consumer relying on and following the values for the front and rear GAWR, for purposes of vehicle loading, would not be at risk of overloading the axles.

5. The tires on the Metris vans have a payload reserve of 6.5 percent at a load of 1,550 kg per axle, which is slightly below the payload reserve of 10 percent specified by FMVSS No. 110. Moreover, the tire pressure specified for each tire on the Metris Van is at least 11% higher (tire pressure reserve) then the ETRTO (European Tyre and Rim Technical Organisation) recommended tire pressure. This tire pressure reserve reduces the stress on the tire, due to reduced deflection of the tire under load.

6. Further, the Metris vans are equipped with a standard tire pressure monitoring system (TPMS) that is compliant with FMVSS No. 138. Depending on the severity of the loss of tire pressure, the Metris vans display one of three specialized TPMS warnings in the instrument panel advising the operator of the loss of pressure and how quickly the operator should take corrective action. If the tires were to experience a loss of tire pressure, the driver would be alerted to this condition and could take appropriate measures. Thus, if there were to be a loss of tire pressure, consistent with the standard, the TPMS system would warn the operator.

7. After identifying the discrepancy in the values listed on the tire and loading information placard, Daimler Vans reviewed what, if any, impact there could be on various vehicle systems that could potentially be affected by the discrepancy. This review considered the effect on steering, braking, axle strength, and crashworthiness if the operator loaded the vehicle to the maximum amount listed on the tire and loading information placard. As a result of the review, Daimler Vans was able to confirm that the discrepancy will not adversely impact any of these systems or otherwise diminish the performance or crashworthiness of the Metris vans.

8. Daimler Vans states that it is not aware of any consumer complaints or reports of accidents or injuries related to overloading the vehicles that could reasonably be related to not derating the reinforced passenger car tires prior to certification. In addition, Metris vans sold in Europe are equipped with tires that are the same size and the vehicles have the same axle weight ratings. The European vehicles have similarly performed without incident.

9. The Agency has previously granted petitions for inconsequential noncompliance involving similar inconsistencies involving tire maximum load ratings. In 2017, the Agency granted a petition for inconsequential noncompliance where a manufacturer had incorrectly overstated the maximum occupant and cargo weight on the tire and loading information placard, by a total of 30 kg. Although on its face, this discrepancy would have appeared to have led consumers to potentially overload the vehicle, the Agency concluded that when the vehicle was loaded to the value listed on the placard, the specific tires installed on the vehicles were nonetheless technically capable of handling the overstated weight and cargo. In this instance, for one vehicle variation, the maximum loads were below the GAWR and gross vehicle weight rating (GVWR) and for another vehicle variation, the maximum loads were ''essentially at the certified GAWR and GVWR values.'' The Agency concluded that the tires were ''more than adequate'' to manage the additional vehicle and cargo weight and that the vehicles could safely manage the additional weight without overload concerns. *See* 82 FR 33547 (July 20, 2017) (Grant of Petition for Decision of Inconsequential Noncompliance by Mercedes-Benz USA, LLC).

10. The noncompliance at issue here is similar to the above petition. In this case, there is also little concern of vehicle overloading because the specifications for the tires installed on the Metris vans are technically capable of managing the additional weight even without the reinforced passenger car tires having been derated.

Daimler Vans concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Daimler Vans' complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov* and following the online search instructions to locate the docket number listed in the title of this notice.

*VI. NHTSA's Analysis:* The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[1]

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [3] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [4]

The intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires appropriate to handle maximum vehicle loads and prevent overloading.

[1] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[4] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

Daimler Vans explains that due to an oversight, a 1.10 reduction on each tire's maximum load rating was not applied before the overall maximum load rating of the tires for each axle was set. As a result, the sum of the maximum load ratings of the tires fitted to each axle (after being divided by 1.10) are less than the GAWR for the axle as specified on the vehicle certification label by 110 lbs. The 1.10 factor reduction due to the use of passenger tires on a van-truck, results effectively in the tires, per FMVSS 110 S4.2.2.2, falling short of covering the vehicle's GAWR which results in a 96.8% coverage rate (3307 lbs/3417 lbs) of covering the vehicle's GAWR.

Daimler Vans additionally notated that the Agency has previously granted petitions for inconsequential noncompliance involving similar inconsistencies involving tire maximum load ratings. The referenced granted petition involves passenger vehicles where the vehicle manufacturer had incorrectly overstated the maximum occupant and cargo weight on the Tire and Loading Information Label. In short, the Agency concluded that when the vehicle was loaded to the value listed on the placard, the specific tires installed on the vehicles were nonetheless technically capable of handling the overstated weight and cargo. It should, however, be noted that in the ''similar granted petition,'' the maximum load values were either at or below the GAWR/GVWR for the subject vehicles.

*VII. NHTSA's Decision:* In consideration of the foregoing analysis, NHTSA finds that Daimler Vans has not met its burden of persuasion that the subject FMVSS No. 110 noncompliance at issue is inconsequential to motor vehicle safety.

Accordingly, Daimler Vans' petition is hereby denied and Daimler Vans is consequently obligated of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

*Authority:* (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Anne L. Collins,**

*Associate Administrator for Enforcement.*

[FR Doc. 2022–13598 Filed 6–24–22; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Revision; Submission for OMB Review; Regulation C—Home Mortgage Disclosure Act

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the revision of the information collection titled ''Regulation C—Home Mortgage Disclosure Act.'' The OCC also is giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be submitted on or before July 27, 2022.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0345, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''1557–0345'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also 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.

On April 21, 2022, the OCC published a 60-day notice for this information collection, 87 FR 23911. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0345'' or ''Regulation C—Home Mortgage Disclosure Act.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. OCC asks that OMB extend its approval of the collection in this notice.

*Title:* Regulation C—Home Mortgage Disclosure Act.

*OMB Control No.:* 1557–0345.

*Type of Review:* Regular review.

*Abstract:* The Consumer Financial Protection Bureau's (CFPB) Regulation

C,[1] which implements the Home Mortgage Disclosure Act (HMDA)[2] requires certain depository and non-depository institutions (financial institutions) that make certain mortgage loans to collect, report, and disclose data about originations and purchases of mortgage loans as well as data about loan applications that do not result in originations. HMDA requires the generation of loan data that can be used to: (1) help determine whether depository and non-depository institutions are serving the housing needs of their communities; (2) assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and (3) assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.

Twelve CFR 1003.5 requires the disclosure and reporting of data on mortgage loans. Section 1003.5(a)(1)(i) provides that by March 1 following the calendar year for which data are collected and recorded, a financial institution must submit its annual loan/application register in electronic format to the appropriate Federal agency at the address identified by such agency. An authorized representative of the financial institution with knowledge of the data submitted must certify to the accuracy and completeness of data submitted. The financial institution must retain a copy of its annual loan/application register for at least three years.

Section 1003.5(a)(1)(ii) provides that within 60 calendar days after the end of each calendar quarter except the fourth quarter, a financial institution that reported for the preceding calendar year at least 60,000 covered loans and applications, combined, excluding purchased covered loans, shall submit to the appropriate Federal agency its loan/application register containing all data required to be recorded for that quarter pursuant to § 1003.4(f). The financial institution shall submit its quarterly loan/application register pursuant to § 1003.5(a)(1)(ii) in electronic format at the address identified by the appropriate Federal agency for the institution.

Under section 1003.5(a)(2), a financial institution that is a subsidiary of a bank or savings association must complete a separate loan/application register. The subsidiary must submit the loan/application register, directly or through its parent, to the appropriate Federal agency for the subsidiary's parent at the address identified by the agency.

Section 1003.5(b)(1) provides that the Federal Financial Institutions Examination Council (FFIEC) will make available a disclosure statement based on the data each financial institution submits for the preceding calendar year.

Section 1003.5(b)(2) provides that no later than three business days after receiving notice from the FFIEC that a financial institution's disclosure statement is available, the financial institution must make available to the public upon request at its home office, and each branch office physically located in each Metropolitan Statistical Area (MSA) and each Metropolitan Division (MD), a written notice that clearly conveys that the institution's disclosure statement may be obtained on the CFPB's website. A financial institution must make this notice available for a period of three years.

Section 1003.5(c)(1) provides that a financial institution must make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's loan/application register, as modified by the CFPB to protect applicant and borrower privacy, may be obtained on the CFPB's website. A financial institution shall make available the notice following the calendar year for which the data are collected. A financial institution must make the notice available to the public for a period of five years.

Section 1003.5(d)(2) provides that a financial institution may make available to the public, at its discretion its disclosure statement or its loan/application register, as modified by the CFPB to protect applicant and borrower privacy.

Section 1003.5(e) provides that a financial institution must post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office physically located in each MSA and each MD. This notice must clearly convey that the institution's HMDA data is available on the CFPB's website.

*Affected Public:* Businesses or other for-profit.

*Burden Estimates:*

*Estimated Number of Respondents:* 437.

*Estimated Annual Burden:* 609,100 hours.

*Frequency of Response:* On occasion.

*Comments:* On April 21, 2022, the OCC published a 60-day notice for this information collection, 87 FR 23911. No comments were received. Comments continue to be solicited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2022–13659 Filed 6–24–22; 8:45 am]

**BILLING CODE 4810–33–P**

[1] 12 CFR part 1003.

[2] 12 U.S.C. 2801–2811.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments.'' The OCC also is giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be submitted on or before July 27, 2022.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0194, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''1557–0194'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also 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.

On April 21, 2022, the OCC published a 60-day notice for this information collection, 87 FR 23914. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0194'' or ''Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 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, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

*Title:* Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments.

*OMB Control No.:* 1557–0194.

*Description:* This submission covers an existing regulation (12 CFR part 24), including the CD–1, National Bank Community Development Investments form, contained in 12 CFR part 24 Appendix 1, pursuant to which a national bank may notify the OCC, or request OCC approval, of certain community development investments.

Section 24.4(a) provides that a national bank may submit a written request to the OCC to exceed five percent of its capital and surplus for its aggregate, outstanding public welfare investments, up to 15 percent of its capital and surplus. The OCC may grant permission to the bank to make subsequent public welfare investments up to the approved investment limit without prior notification to, or approval by the OCC, using the after-the-fact notification process consistent with § 24.5(a).

Section 24.5(a) provides that an eligible national bank may make a public welfare investment without prior notification to, or approval by, the OCC if the bank submits an after-the-fact notification of an investment within 10 days of making the investment.

Section 24.5(a)(5) provides that a national bank that is not an eligible bank consistent with § 24.2(e), but that is at least adequately capitalized and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the OCC requesting authority to submit after-the-fact notices of its public welfare investments.

Section 24.5(b)(1) provides that if a national bank does not meet the requirements for after-the-fact notification, including if the bank's aggregate outstanding investments exceed the five percent limit, unless previously approved by the OCC for subsequent public welfare investments, the bank must submit an investment proposal to the OCC seeking permission to make the public welfare investment.

*Type of Review:* Regular.

*Affected Public:* Individuals; Businesses or other for-profit.

*Estimated Number of Respondents:* 1,200.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 1,910 hours.

On April 21, 2022, the OCC published a 60-day notice for this information collection, 87 FR 23914. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2022–13633 Filed 6–24–22; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Proposed Collection; Comment Request; Bureau of Engraving and Printing Features of Interest Survey for Banknote Equipment Manufacturers

**AGENCY:** Bureau of Engraving and Printing, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before August 26, 2022.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Crystal Johnson at Bureau of Engraving and Printing, BEP and CRM Customer Support, 14th and C Streets SW, Washington, DC 20228 or by emailing *BEM_and_CRM_Customer_Support@bep.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Crystal Johnson by emailing *BEM_and_CRM_Customer_Support@bep.gov,* calling (202) 664–3466, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Bureau of Engraving and Printing Features of Interest Survey for Banknote Equipment Manufacturers.

*OMB Control Number:* 1520–NEW.

*Type of Review:* Request for a new OMB Control Number.

*Description:* The Bureau of Engraving and Printing Feature of Interest Survey for Banknote Equipment Manufacturers (BEMs) is voluntarily completed by BEM companies to inform BEP's efforts to develop features to be included in future Federal Reserve Note (FRN) redesigns. The survey gives BEM companies the opportunity to comment whether proposed features and/or FRN redesigns (a.k.a. Features of Interest) can be detected, validated, transported, and stored by their products. Banknote Equipment Manufacturers (BEMs) are companies that produce any type of equipment that handles banknotes for commercial purposes involving accept/reject decisions for FRNs.

*Form:* None.

*Affected Public:* Businesses or other for profits.

*Estimated Number of Respondents:* 50.

*Frequency of Response:* 3 per year.

*Estimated Total Number of Annual Responses:* 150.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 150.

*Request for Comments:* Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Katherine A. Allen,**

*BEP PRA Clearance Officer.*

[FR Doc. 2022–13594 Filed 6–24–22; 8:45 am]

**BILLING CODE 4840–01–P**

## DEPARTMENT OF THE TREASURY

**[Docket No. TREAS–DO–2022–0012]**

### Notice Seeking Public Comment on Additional Transparency for Secondary Market Transactions of Treasury Securities

**AGENCY:** Department of the Treasury.

**ACTION:** Notice and request for information.

**SUMMARY:** The Department of the Treasury (Treasury) is seeking public comment on additional post-trade transparency of data regarding secondary market transactions of Treasury securities, including potential benefits and risks of several examples of potential ways to build on existing public transparency.

**DATES:** Comments are due by August 26, 2022.

**ADDRESSES:** You may submit comments using any of the following methods:

*Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions on the website for submitting comments.

*Email: govsecreg@fiscal.treasury.gov.* Include docket number TREAS–DO–2002–0012 in the subject line of the message.

All submissions should refer to docket number TREAS–DO–2022–0012. Please submit your comments using only one method, along with your full name and mailing address. We will post comments on *www.regulations.gov* and *www.treasurydirect.gov.* In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Fred Pietrangeli, Director, Office of Debt Management, Office of the Assistant Secretary for Financial Markets, at *debtmanagement@treasury.gov* or *Fredrick.Pietrangeli@treasury.gov.* Questions about submitting comments should be directed to Lori Santamorena, Government Securities Regulations Staff, at (202) 504–3632 or *govsecreg@fiscal.treasury.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Treasury, in consultation with other members of the Inter-Agency Working Group on Treasury Market Surveillance (IAWG),[1] is exploring the possibility of additional post-trade transparency of data for secondary market cash transactions of Treasury securities (which we refer to as the ''Treasury securities market'' in this request for information).[2] Providing additional insight into these transactions may enhance liquidity by fostering a greater understanding of market activity across market segments and supporting the smooth functioning of the Treasury securities market. Additional transparency may also promote greater competition in the Treasury securities

[1] The IAWG members are Treasury, the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Reserve Bank of New York (FRBNY), the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC).

[2] In addition, at the November 2021 U.S. Treasury Market Conference, Treasury Under Secretary for Domestic Finance Nellie Liang highlighted past improvements in data quality and transparency and noted Treasury ''will consider ways to improve transparency about transactions, such as providing data at a higher frequency, building on lessons learned from the recent expanded reporting of weekly volumes and recognizing investors' needs to be able to transact quickly in large quantities.'' Remarks by Under Secretary for Domestic Finance Nellie Liang at the 2021 Treasury Market Conference'' (Nov. 17, 2021), available at *https://home.treasury.gov/news/press-releases/jy0491.*

market. However, based on the vital roles and unique structure of the Treasury securities market, careful consideration is necessary regarding how much and in what form information should be made available, so that market participants are not disincentivized from providing liquidity and one group of participants is not unduly favored over another. Specifically, consideration is necessary given characteristics of the Treasury market structure that differ from other fixed-income markets, such as differences in market segmentation, overall volumes, individual trades sizes, types of market participants, and methods of execution. Treasury is interested in hearing from the public on the potential benefits and risks of several examples of potential ways to build on existing public transparency.

*IAWG Workstreams*

This request for information regarding additional post-trade transparency for secondary market cash transactions of Treasury securities is part of the ongoing work of the IAWG to strengthen the resilience of the Treasury market across all segments, including cash, futures, and financing. As the deepest and most liquid financial market in the world, the Treasury market serves several key functions, including enabling the financing of the federal government at the least cost, providing a safe and liquid asset to support the flow of capital and credit to households and businesses, and facilitating the implementation of monetary policy. To support these functions and to improve Treasury market resilience, the IAWG's work has been organized into five workstreams: improving resilience of market intermediation; improving data quality and availability; evaluating expanded central clearing; enhancing trading venue transparency and oversight; and assessing effects of fund leverage and liquidity risk management practices.[3] As outlined in the November 2021 Staff Progress Report (Staff Progress Report), IAWG staffs proposed ''transparency that fosters public confidence, fair trading, and a liquid market'' as a principle to guide public policy decisions in the Treasury securities market, and created a workstream on improving data quality and availability.[4] The Staff Progress Report described variations in data quality and availability for various Treasury market segments, including cash, funding, and derivatives.

In referring to the March 2020 public release of the TRACE Treasury Aggregate Statistics, the Staff Progress Report noted that ''given the positive feedback received on the release of this data, and the lack of negative market feedback, it is consistent with prior principles to explore increasing transparency further.'' [5]

*Timeline of Treasury TRACE Data Dissemination and Improving Data Quality*

Beginning in 2017, the Financial Industry Regulatory Authority (FINRA) required its members to report Treasury secondary market transactions through its Trade Reporting and Compliance Engine (TRACE) and shared this data with Treasury, the Federal Reserve Board, FRBNY, the SEC, and the CFTC.[6]

In 2018, Treasury conducted extensive market outreach and analysis to better understand the potential benefits and risks of additional public transparency for Treasury securities TRACE transaction data.[7]

Informed by that effort, FINRA, in consultation with Treasury and with the approval of the SEC,[8] began publicly releasing weekly aggregate volumes, referred to as ''TRACE Treasury Aggregate Statistics,'' in March 2020 based on security type, interdealer or dealer-to-customer venue, remaining term to maturity, and whether the securities were the most recently auctioned (on-the-runs) or were more seasoned (off-the-runs).[9] The following year, enhancements were made to the weekly aggregates, specifically releasing historical data since January 2019 and incorporating the 20-year sector to accommodate the re-introduction of the 20-year nominal coupon bond.[10] Market feedback has indicated the current release of weekly aggregates provides helpful information without negative implications for liquidity, and that further transparency could be beneficial.

Since receiving the TRACE data, Treasury has coordinated with other IAWG members and FINRA to understand how to improve the quality of the TRACE data, principally to better inform the official sector, but also in consideration of potential additional public transparency. FINRA has taken several actions to improve the quality and coverage of the TRACE data, including requiring large alternative trading systems (ATS) to identify non-FINRA member subscribers (such as principal trading firms) on transaction reports,[11] clarifying the exclusion of auction transactions,[12] and requiring FINRA members to separately report transactions that occur within discrete trading sessions on ATSs, thereby more clearly identifying who is trading with whom in certain instances.[13]

In addition, in consultation with Treasury, FINRA solicited comments in December 2020 on potential enhancements to the transaction data reported to TRACE.[14] The potential changes to TRACE reporting of Treasury securities transactions would (1) require more granular timestamps where applicable, (2) shorten the reporting timeframe from end-of-day to within 60 minutes in most cases, (3) standardize price reporting, including separating ATS fees, and (4) introduce new modifiers to identify non-ATS venues, methods of execution, trading units within a firm executing a trade, multi-leg trading strategies, and methods used to clear and settle transactions.[15]

Furthermore, in October 2021 the Federal Reserve Board adopted a proposal to require certain depository institutions to report Treasury securities transactions to TRACE beginning in September 2022.[16] Reporting by

[3] Id.

[4] ''Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report'' (Nov. 8, 2021), available at *https://home.treasury.gov/system/files/136/IAWG-Treasury-Report.pdf.*

[5] Id.

[6] FINRA Regulatory Notice 16–39, available at *https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-39.pdf.*

[7] ''Remarks of Deputy Secretary Justin Muzinich at the 2019 US Treasury Market Structure Conference'' (Sept. 23, 2019), available at *https://home.treasury.gov/news/press-releases/sm782.*

[8] ''Order Approving Proposed Rule Change To Allow FINRA To Publish or Distribute Aggregated Transaction Information and Statistics on U.S. Treasury Securities,'' available at *https://www.finra.org/sites/default/files/2019-12/SR-FINRA-2019-028-Approval-Order.pdf.*

[9] ''Now Available—Weekly Aggregated Reports and Statistics for U.S. Treasury Securities'' (Mar. 10, 2020), available at *https://www.finra.org/filing-reporting/trace/now-available-weekly-aggregated-reports-and-statistics-us-treasury.*

[10] ''Enhancements to Weekly Aggregated Reports and Statistics for U.S. Treasury Securities'' (Apr. 29, 2021), available at *https://www.finra.org/filing-reporting/trace/enhancements-weekly-aggregated-reports-statistics-us-treasury-securities.*

[11] Effective April 1, 2019, large alternative trading systems were required to identify non-FINRA member subscriber counterparties in TRACE reports to be used for regulatory purposes and not made public. See FINRA Regulatory Notice 18–34, available at *https://www.finra.org/rules-guidance/notices/18-34.*

[12] FINRA TRACE Trade Reporting Notice U.S. Treasury Securities Auction Awards, available at *https://www.finra.org/sites/default/files/notice_doc_file_ref/Trade-Reporting-Notice-010919.pdf.*

[13] Effective April 12, 2019, a temporary exemption expired that permitted aggregate reporting for certain ATS transactions. See FINRA Regulatory Notice 19–03, available *https://www.finra.org/rules-guidance/notices/19-03.*

[14] FINRA Regulatory Notice 20–43, available at *https://www.finra.org/sites/default/files/2020-12/Regulatory-Notice-20-43.pdf.*

[15] *Id.*

[16] 86 FR 59716 (Oct. 28, 2021).

depository institutions will fill a key gap in the current TRACE data.

*Recent FINRA Actions*

Regarding data quality, in May 2022 FINRA filed with the SEC a proposal to amend its rules for reporting transactions to TRACE, requiring that (1) timestamps for most electronic transactions are reported at the finest increment captured by the execution system, and (2) transactions are generally reported as soon as practicable but no later than 60 minutes.[17]

Regarding additional transparency, also in May 2022, the FINRA Board of Governors approved the submission to the SEC of a proposal to publish aggregated transaction information on Treasury securities more frequently, in response to a request from Treasury.[18]

## II. Solicitation for Comments

Treasury is seeking public comment on additional post-trade transparency in the Treasury securities market, including potential benefits and risks of several options to build on existing public transparency.

Any additional transparency should take into consideration the differences among security types and trading venues. For example, on-the-run fixed-rate nominal Treasury securities are actively traded, accounting for an average of about 60% of the weekly volume for all Treasury securities,[19] with a significant portion occurring on electronic interdealer platforms. In contrast, other Treasury securities, including off-the-run fixed-rate nominal securities, are more often traded between dealers and customers, in larger individual trade sizes, and are more likely to use voice-based methods or electronic request-for-quote. In addition, further differences exist between fixed-rate nominal coupons, bills, floating rate notes (FRN), Treasury inflation-protected securities (TIPS), and STRIPS (Separate Trading of Registered Interest and Principal of Securities).

Other considerations for the design of additional transparency include the timing of reporting of transactions to TRACE and the potential for subsequent revisions to reports. Under current FINRA rules, FINRA members must generally report transactions by the end of the day. As stated above, FINRA's recent proposal would reduce this timeframe to 60 minutes. In some instances, transactions may be reported late or revised after the reporting timeframe. The current weekly aggregate statistics are released with a lag of two business days to incorporate most of these late or revised transactions. However, after the weekly aggregate statistics are published, they are not amended to incorporate additional late transactions or revisions. If transaction data were released with a shorter delay, additional consideration would need to be given to the potential effects or treatment of late or revised transactions.

Another consideration when evaluating the benefits and risks of additional transparency is measuring liquidity. One common definition of liquidity in the Treasury securities market is the ability to both transact continuously and trade in large quantities at minimal cost.[20] Measuring liquidity generally relies on observing a collection of price and quantity metrics, such as the quoted spread between bid and offer prices, the depth of resting orders in a central-limit order book, the replenishment rate of central-limit book orders, or the price impact in response to large net flows. Treasury is also interested in additional perspectives on how best to measure liquidity in the Treasury securities market and how liquidity is likely to change with additional transparency of transactions.

More generally, Treasury seeks feedback on security characteristics, market structure features, and other factors when considering additional transparency, as well as specific recommendations to help ensure the public release of information appropriately balances the benefits and risks.

Responses to the following topics will help inform Treasury's policy perspectives on additional post-trade data transparency regarding the Treasury securities market. Historically, Treasury has taken a gradual approach to additional public transparency based on feedback from a range of Treasury market participants, including both intermediaries and end-user investors. Some market participants have expressed concerns regarding the effect of additional transparency on the potential willingness and ability of intermediaries to engage in large institutional risk transfer in the Treasury securities market, in particular for off-the-run Treasury securities. This could in turn adversely affect market liquidity including, but not limited to, bid-ask spread and depth of market and ultimately Treasury's debt issuance costs.

In contrast, other market participants have cited the benefits of additional transparency, including post-trade data for use in transaction cost analysis and for greater visibility into intermediation patterns, which could help inform investor decisions around capital allocation to various segments of the Treasury securities market.

Please include in your comments: (1) any data or reasons related to your views, including examples; (2) any alternative approaches and options that should be considered; and (3) any specific recommendations regarding the appropriate form for publicly released transaction information. Where appropriate, please distinguish between the different Treasury security types (*i.e.,* fixed-rate nominal coupons, bills, TIPS, FRNs, and STRIPS), characteristics (*e.g.,* on-the-run, off-the-run, etc.), and market segments (*e.g.,* interdealer, dealer-to-customer, etc.). We also welcome comments on any aspect of additional post-trade transparency not addressed in this request for information.

1. Benefits and Risks of Additional Public Transparency in the Treasury Securities Market

1.1 What are the main benefits of additional transparency of data regarding transactions in the Treasury securities market? Please elaborate on the benefits. How should the benefits be measured?

1.2 What are the main risks of additional transparency of data regarding transactions in the Treasury securities market? Please elaborate on the risks. How should the risks be measured?

1.3 In what ways would additional transparency further increase public confidence in the Treasury securities market?

1.4 What types of market participants would benefit from additional transparency? Would some market participants derive greater benefit from additional transparency relative to others? If yes, please elaborate on the types of market participants and the specific benefits.

1.5 What types of market participants would be harmed more from additional transparency? Would some market participants derive greater

[17] *https://www.finra.org/sites/default/files/2022-05/SR-FINRA-2022-013.pdf.*

[18] ''May 2022 Board Update'' (May 20, 2022), available at *https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-post-meeting-May-2022.*

[19] Treasury staff calculations based on the publicly available TRACE Treasury Aggregate Statistics for 2021.

[20] For a discussion of measuring liquidity, see ''Joint Staff Report: The U.S. Treasury Market on October 15, 2014'' (July 13, 2015), available at *https://home.treasury.gov/system/files/276/joint-staff-report-the-us-treasury-market-on-10-15-2014.pdf,* and ''Notice Seeking Public Comment on the Evolution of the Treasury Market Structure,'' 81 FR 3928 (Jan. 22, 2016).

harm from additional transparency relative to others? If yes, please elaborate on the types of market participants and the specific harms.

1.6 In what form (*e.g.,* granularity of data, aggregation of data, frequency of release, time of day, data format, etc.) would public release of Treasury securities transactions market data best balance the potential benefits and harms? Please elaborate.

2. Considerations for Additional Public Transparency as it Relates to Market Resilience

2.1 How would additional transparency improve Treasury securities market resilience?

2.2 Please provide specific examples, if applicable, of how additional transparency would have helped improve or hurt market resilience during recent periods of market volatility such as the October 2014 flash rally, the September 2019 repo market pressures, and the March 2020 COVID–19 pandemic-related dislocations.[21]

3. Considerations for Additional Public Transparency as it Relates to Market Liquidity

3.1 How would you define liquidity in the Treasury securities market?

3.2 What data or metrics should be used to measure liquidity in the Treasury securities market?

3.3 How could additional transparency incentivize intermediation or otherwise improve Treasury securities market liquidity, if at all? Please provide specific examples of how additional transparency could improve market liquidity.

3.4 How could additional transparency disincentivize intermediation or otherwise impair Treasury securities market liquidity, if at all?

4. Examples of Additional Transparency

Note the examples presented in this section are designed to illustrate a range of possible degrees of transparency to better understand market participants views on the benefits and risks of additional transparency. These illustrative examples are not the only options for levels of transparency. If market participants have other views, please elaborate.

4.1 Example A. For each individual CUSIP, daily average prices, trade count, and traded volumes could be released. Please comment on the benefits and risks of this example.

4.2 Example B. Adding to Example A, transaction-level details could be released for on-the-run nominal coupons. Please comment on the benefits and risks of this example, including whether transactions above a certain dollar value should disclose the actual trade size or be subject to caps or additional delays. What specific caps or delays would be preferable, if any?

4.3 Example C. Adding to Example B, transaction-level details could be released for every Treasury security. Please comment on the benefits and risks of this example, including whether volume caps or delays should be tailored to different segments based on the different liquidity characteristics of Treasury securities in those segments.

4.4 Are there other examples that Treasury should consider, or modifications to Examples A, B, and C? Please elaborate.

4.5 In addition to the examples above, what are your views on providing transaction-level data with anonymized participant identification, with a significant lag, that could either be available to the public or only be available to academic institutions for the purpose of research?

4.6 Please indicate which of the above examples you most prefer, or if you prefer an outcome not represented in these examples. Please elaborate.

4.7 What are the potential benefits and risks of gradually phasing in additional transparency over time? What lessons can be drawn about phasing from the implementation of additional transparency in other markets? What would be your recommendation for a phase-in schedule?

5. Volumes and Price Considerations and Scope

5.1 Please describe how volume data could be adjusted for large trade sizes if the data is publicly disseminated. For example, should large trades be excluded from aggregates, or large volumes capped if provided at a transaction level as is done for transparency of certain other fixed-income securities? If so, please elaborate on how this should be different for on-the-run versus off-the-run securities, security type, or maturity segment.

5.2 Pre- and post-auction when-issued volumes through the end of the auction day are currently excluded from the weekly data release. What are your views on continuing to exclude this data or separately identifying pre- or post-auction when-issued volumes?

5.3 How should additional transparency vary, if at all, based on (a) security type (*i.e.,* fixed-rate nominal coupons, bills, FRNs, TIPS, and STRIPS), (b) on-the-run or off-the-run status, (c) maturity, or (d) other security characteristics including, but not limited to, average trading volumes or trade size?

5.4 What pricing information would be the most beneficial to release, such as end-of-day prices, volume-weighted average prices, or transaction-level prices? What pricing information would be most harmful to release? Please explain your reasoning and how such information would be of use.

5.5 If price information is aggregated for release, how should the pricing information be calculated, such as for a weighted average? Is there a certain time of day that prices should be captured, or is there a certain time range to calculate averages (*e.g.,* volume-weighted prices by tenor from 9 a.m. to 3.30 p.m.)? Is there a preference for yield or price or some other pricing convention? Please be specific by security type.

5.6 What types of transactions (*e.g.,* swap box, basis, affiliate, and others) should be identified separately due to a different pricing convention that could result in prices appearing to be different from the prevailing market price if not properly identified? How should these trades be identified and represented in the data for public dissemination? What is your view on including indicators for transactions using a different pricing methodology? Should the pricing of different types of transactions be converted to comparable prices? Please elaborate on the benefits and risks.

6. Other Trade Characteristics

6.1 What additional trade details should be released, such as counterparty types, whether a trade occurs on an ATS, the type of trading venue or venue name, the trade direction (buy or sell), the trading protocol (*e.g.,* request-for-quote, central limit order book, etc.), or any other details that may be considered? What are the benefits and risks of releasing such additional information?

6.2 The current release provides volume aggregates. How do your views change on what, if any, trade details should be released if the data is disseminated at the transaction level?

6.3 When a trade involves two or more reporting counterparties, should the transaction reports be matched and consolidated before dissemination so that a trade is only reported once? Should only one side of each trade be released? What should be done for a

[21] See ''Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report'' (Nov. 8, 2021), available at *https://home.treasury.gov/system/files/136/IAWG-Treasury-Report.pdf.*

trade with multiple counterparties (a so-called ''one-to-many'' trade)?

6.4 Should trades in different market segments or on different venues be displayed differently? For example, the interdealer market often operates on a microsecond level, often through automated trading on electronic centralized order books. In contrast, the dealer-to-customer market, while utilizing electronic trading more than in the past, still exhibits a significant amount of manual or voice-based trades. Should these transactions be treated or displayed differently, and if so, why and in what way?

7. Late Transactions and Revisions

7.1 How should late transactions and revisions be addressed in the publicly disseminated data?

7.2 To what extent should the volume of late transactions and revisions influence dissemination timing?

**Brian Smith,**

*Deputy Assistant Secretary for Federal Finance.*

[FR Doc. 2022–13540 Filed 6–24–22; 8:45 am]

**BILLING CODE 4810–AK–P**

## UNIFIED CARRIER REGISTRATION PLAN

### Sunshine Act; Meeting

**TIME AND DATE:** June 30, 2022, 12 p.m. to 2 p.m., Eastern time.

**PLACE:** This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll) or (ii) 1–877–853–5247 (US Toll Free) or 1–888–788–0099 (US Toll Free), Meeting ID: 984 5137 4096, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJwpcuirqT8qE9JrExdxhInvTjO-4LtN_WZV*.

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Audit Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

### Proposed Agenda

*I. Call to Order*—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Audit Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

*II. Verification of Publication of Meeting Notice*—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

*III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules*—UCR Audit Subcommittee Chair

*For Discussion and Possible Audit Subcommittee Action*—The agenda will be reviewed, and the Subcommittee will consider adoption.

*Ground Rules*

➢ Subcommittee action only to be taken in designated areas on the agenda.

*IV. Review and Approval of Subcommittee Minutes from the April 14, 2022 Meeting*—UCR Audit Subcommittee Chair

*For Discussion and Possible Subcommittee Action*—Draft minutes from the April 14, 2022 Subcommittee meeting via teleconference will be reviewed. The Subcommittee will consider action to approve.

*V. Additional Compliance Evaluation Tools for the Annual State Audit Progress Report*—UCR Audit Subcommittee Chair

*For Discussion and Possible Subcommittee Action*—The UCR Audit Subcommittee Chair will lead a discussion regarding the current evaluation process for the participating states' audit programs as required by the UCR Agreement. The Subcommittee will discuss options to require states to review and close all bracket 5 and 6 unregistered motor carriers. The Subcommittee may take action to approve and recommend to the UCR Board such requirement as discussed by the Subcommittee.

*VI. Potential revisions to the UCR Handbook*—UCR Audit Subcommittee Chair and UCR Executive Director

*For Discussion and Possible Subcommittee Action*—The UCR Audit Subcommittee Chair and UCR Executive Director will lead a discussion regarding potential revisions and clarifications to the language in the UCR Handbook pertaining to the usage of the term ''operated'' as it relates to a motor carrier beginning operations. An update on other proposed revisions to the UCR Handbook will also be presented and discussed. The Subcommittee may take action to approve proposed revisions to the UCR Handbook and recommend the revisions to the UCR Board.

*VII. Motor Carriers Operating Without an Active USDOT Number*—UCR Audit Subcommittee Vice-Chair

The UCR Audit Subcommittee Vice-Chair will lead a discussion on how often a 49 CFR Section 392.9b (Prohibited Transportation) violation occurs and how to contact operators to remedy the problem.

*VIII. State Compliance Review Program*—UCR Audit Subcommittee Chair and UCR Depository Manager

The UCR Audit Subcommittee Chair and the UCR Depository Manager will lead a discussion on program objectives and states scheduled for review in 2022.

*IX. Open Discussion Regarding Ways and Means to Increase UCR Registration Percentages*—UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair

The UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair will lead a discussion to share state resources (auditors and other contacts), leveraging partner relationships, auditing tools and other ideas to increase UCR registration percentages to promote improving fairness within the industry.

*X. Maximizing the Value of the Should Have Been (SHB) and Enforcement Efficiency Tools*—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and DSL Transportation Services, Inc. (DSL)

The UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and DSL will provide an update on the value achieved by utilizing the Shadow MCMIS and other tools in the National Registration System (NRS). The discussion will highlight the financial value to the states by vetting businesses for UCR compliance, commercial registration, IFTA, intrastate, and interstate operating authority.

*XI. Future Virtual Audit Training Sessions for State Auditors*—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and DSL

The UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and DSL will lead a discussion regarding the value of providing a series of 30-minute virtual audit training sessions.

*XII. Future Audit Subcommittee Meetings*—UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair

The UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair will lead a discussion regarding future virtual and in-person meetings.

*XIII. Other Items*—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

*XIV. Adjournment*—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5 p.m. Eastern time, June 22, 2022 at: *https://plan.ucr.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of

Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

**Alex B. Leath,**

*Chief Legal Officer, Unified Carrier Registration Plan.*

[FR Doc. 2022–13755 Filed 6–23–22; 4:15 pm]

**BILLING CODE 4910–YL–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0249]**

## Agency Information Collection Activity Under OMB Review: Loan Service Report

**AGENCY:** Loan Guaranty Service, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration, Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Loan Guaranty Service, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 26, 2022.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0249'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0249'' in any correspondence.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* Loan Service Report, VA form 26–6808.

*OMB Control Number:* 2900–0249.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–6808 (fillable printable) is used when servicing delinquent guaranteed and insured loans and loans sold under 38 CFR 36.4600. With respect to the servicing of guaranteed and insured home loans and loans sold under 38 CFR 36.4600, the holder has the primary servicing responsibility.

VA Form 26–6808 is completed by Loan Technicians (LSs) during the course of personal contacts with delinquent obligors. The information documented on the form is necessary for VA to determine whether a loan default is insoluble or whether the obligor has reasonable prospects for curing the default and maintaining the mortgage obligation in the future.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 2083 hours.

*Estimated Average Burden per Respondent:* 25 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 5,000.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2022–13650 Filed 6–24–22; 8:45 am]

**BILLING CODE 8320–01–P**

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**Federal Register**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available at *https://www.govinfo.gov*. Some laws may not yet be available.

**H.R. 1170/P.L. 117–152**
To designate the facility of the United States Postal Service located at 1 League in Irvine, California, as the ''Tuskegee Airman Lieutenant Colonel Robert J. Friend Memorial Post Office Building''. (June 23, 2022; 136 Stat. 1301)

**H.R. 2324/P.L. 117–153**
To designate the facility of the United States Postal Service located at 2800 South Adams Street in Tallahassee, Florida, as the ''D. Edwina Stephens Post Office''. (June 23, 2022; 136 Stat. 1302)

**H.R. 4591/P.L. 117–154**
VA Electronic Health Record Transparency Act of 2021 (June 23, 2022; 136 Stat. 1303)

**Last List June 22, 2022**

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