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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0760; Project Identifier AD–2024–00175–E; Amendment 39–22714; AD 2024–06–09]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain CFM International, S.A. (CFM) Model CFM56–2, CFM56–3, CFM56–5, CFM56–5B, CFM56–5C, and CFM56–7B engines. This AD was prompted by a report of electrical arcing on certain life-limited critical parts. This AD requires replacing certain compressor discharge pressure (CDP) seals, high-pressure compressor (HPC) stage 3 disks, and high-pressure turbine (HPT) rear shafts. This AD also prohibits installation of certain CDP seals, HPC stage 3 disks, and HPT rear shafts on any engine, and prohibits installation of any engine with certain CDP seals, HPC stage 3 disks, and HPT rear shafts installed on any airplane. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 25, 2024.

The FAA must receive comments on this AD by May 6, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0760; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@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 ''FAA–2024–0760; Project Identifier AD–2024–00175–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

Background

On March 7, 2024, the FAA received a report of electrical arcing on certain life-limited critical parts for CFM Model CFM56–2, CFM56–3, CFM56–5, CFM56–5B, CFM56–5C, and CFM56–7B engines. A maintenance facility reported evidence of electrical arcing and identified the root cause as the use of a certain induction heater during maintenance, which resulted in unintended electrical arcing to those parts. The manufacturer determined that certain CDP seals, HPC stage 3 disks, and HPT rear shafts were subject to the same induction heater during maintenance and may also have electrical arcing damage. This condition, if not addressed, could result in premature fracture of certain CDP seals, HPC stage 3 disks, and HPT rear shafts, with consequent uncontained part release, damage to the engine, damage to the airplane, and loss of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

AD Requirements

This AD requires replacing certain CDP seals, HPC stage 3 disks, and HPT rear shafts. This AD also prohibits installation of certain CDP seals, HPC stage 3 disks, and HPT rear shafts on any engine, and prohibits installation of any engine with certain CDP seals, HPC

stage 3 disks, and HPT rear shafts installed on any airplane.

Justification for Immediate Adoption 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 due to maintenance anomalies that could result in premature fracture of certain life-limited critical parts, with consequent uncontained part release, damage to the engine, damage to the airplane, and loss of the airplane. The compliance time for replacement of these parts is before further flight after the effective date of this AD. The longer these parts remain in service, the higher the probability of failure. 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

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

Costs of Compliance

The FAA estimates that this AD affects 3 engines installed on airplanes of U.S. registry. The FAA estimates that three engines installed on airplanes of U.S. registry require replacement of the CDP seal. The FAA estimates that two engines installed on airplanes of U.S. registry require replacement of the HPC stage 3 disk and HPT rear shaft.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace CDP seal	8 work-hours × $85 per hour = $680	$131,200	$131,880	$395,640
Replace HPC stage 3 disk	8 work-hours × $85 per hour = $680	95,930	96,610	193,220
Replace HPT rear shaft	8 work-hours × $85 per hour = $680	187,900	188,580	377,160

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–06–09 CFM International, S.A.: Amendment 39–22714; Docket No. FAA–2024–0760; Project Identifier AD–2024–00175–E.

(a) Effective Date

This airworthiness directive (AD) is effective March 25, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following CFM International, S.A. Model engines:

(1) CFM56–2, CFM56–2A, CFM56–2B, CFM56–3, CFM56–3B, and CFM56–3C engines;

(2) CFM56–5, CFM56–5–A1/F, CFM56–5A3, CFM56–5A4, CFM56–5A4/F, CFM56–5A5, and CFM56–5A5/F engines;

(3) CFM56–5B1, CFM56–5B1/2P, CFM56–5B1/3, CFM56–5B1/P, CFM56–5B2, CFM56–5B2/2P, CFM56–5B2/3, CFM56–5B2/P, CFM56–5B3/2P, CFM56–5B3/2P1, CFM56–5B3/3, CFM56–5B3/3B1, CFM56–5B3/P, CFM56–5B3/P1, CFM56–5B4, CFM56–5B4/2P, CFM56–5B4/2P1, CFM56–5B4/3, CFM56–5B4/3B1, CFM56–5B4/P, CFM56–5B4/P1, CFM56–5B5, CFM56–5B5/3, CFM56–5B5/P, CFM56–5B6, CFM56–5B6/2P, CFM56–5B6/3, CFM56–5B6/P, CFM56–5B7, CFM56–5B7/3, CFM56–5B7/P, CFM56–5B8/3, CFM56–5B8/P, CFM56–5B9/2P, CFM56–5B9/3, and CFM56–5B9/P engines;

(4) CFM56–5C2, CFM56–5C2/4, CFM56–5C2/F, CFM56–5C2/F4, CFM56–5C2/G, CFM56–5C2/G4, CFM56–5C2/P, CFM56–5C3/F, CFM56–5C3/F4, CFM56–5C3/G, CFM56–5C3/G4, CFM56–5C3/P, CFM56–

5C4, CFM56–5C4/1, CFM56–5C4/1P, and CFM56–5C4/P engines; and

(5) CFM56–7B20, CFM56–7B20/2, CFM56–7B20/3, CFM56–7B20E, CFM56–7B22, CFM56–7B22/2, CFM56–7B22/3, CFM56–7B22/3B1, CFM56–7B22/B1, CFM56–7B22E, CFM56–7B22E/B1, CFM56–7B24, CFM56–7B24/2, CFM56–7B24/3, CFM56–7B24/3B1, CFM56–7B24/B1, CFM56–7B24E, CFM56–7B24E/B1, CFM56–7B26, CFM56–7B26/2, CFM56–7B26/3, CFM56–7B26/3B1, CFM56–7B26/3B2, CFM56–7B26/3B2F, CFM56–7B26/3F, CFM56–7B26/B1, CFM56–7B26/B2, CFM56–7B26E, CFM56–7B26E/B1, CFM56–7B26E/B2, CFM56–7B26E/B2F, CFM56–7B26E/F, CFM56–7B27, CFM56–7B27/2, CFM56–7B27/3, CFM56–7B27/3B1, CFM56–7B27/3B1F, CFM56–7B27/3B3, CFM56–7B27/3F, CFM56–7B27/B1, CFM56–7B27/B3, CFM56–7B27A, CFM56–7B27A/3, CFM56–7B27AE, CFM56–7B27E, CFM56–7B27E/B1, CFM56–7B27E/B1F, and CFM56–7B27E/B3 engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of evidence of electrical arcing on certain life-limited critical parts. The FAA is issuing this AD to prevent premature fracture of certain compressor discharge pressure (CDP) seals, high-pressure compressor (HPC) stage 3 disks, and high-pressure turbine (HPT) rear shafts. The unsafe condition, if not addressed, could lead to uncontained part release, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Before further flight after the effective date of this AD, remove from service each CDP seal, HPC stage 3 disk, and HPT rear shaft having a part number (P/N) and serial number (S/N) specified in Table 1 to paragraph (g) of this AD and replace with a part eligible for installation.

TABLE 1 TO PARAGRAPH (g)—AFFECTED PARTS

Engine S/N	Engine model	CDP seal		HPC stage 3 disk		HPT rear shaft	
		S/N	P/N	S/N	P/N	S/N	P/N
779879	CFM56–5B	GFF5HR7H	2116M25P01	XAEH4524	1590M59P01	TMT3SB56	1864M90P05
575151	CFM56–5B	GFF5J2R0	1523M35P01	XAEW3896	1590M59P01	TMTA6584	1864M90P04
643313	CFM56–5B	GFF5LL3P	2116M25P01	XAE6377U	2116M23P01	TMT1RJ6T	1864M90P04
643308	CFM56–5B	GFF5LL5R	2116M25P01	XAE6416U	2116M23P01	TMT1T7KF	1864M90P04
643443	CFM56–5B	GFF5LN9K	2116M25P01	XAE6576U	2116M23P01	TMT1UCL8	1864M90P04
643384	CFM56–5B	GFF5LN29	2116M25P01	XAE6749U	2116M23P01	TMT1UDJN	1864M90P04
643383	CFM56–5B	GFF5LN7C	2116M25P01	XAE6883U	2116M23P01	TMT1UTL2	1864M90P04
960147	CFM56–7B	GFF5LC8G	2116M25P01	XAE6329U	2116M23P01	TMT1LPT5	1864M90P04
890800	CFM56–7B	GFF5GL4T	2116M25P01	XAEY9605	2116M23P01	TMTA3602	1864M90P04
960113	CFM56–7B	GFF5LLHK	2116M25P01	XAE6496U	2116M23P01	TMT1RJ6P	1864M90P04
960105	CFM56–7B	GFF5KTW1	2116M25P01	XAE6196U	2116M23P01	TMT1PM2N	1864M90P04
803767	CFM56–7B	GFF5LLJE	2116M25P01	XAE6497U	2116M23P01	TMT1PRR6	1864M90P04
962116	CFM56–7B	GFF5LM2F	2116M25P01	XAE6482U	2116M23P01	TMT1PRR4	1864M90P04
960999	CFM56–7B	GFF5LLK6	2116M25P01	XAE6502U	2116M23P01	TMT1PN56	1864M90P04
961787	CFM56–7B	GFF5LL4A	2116M25P01	XAE7292U	2116M23P01	TMT1U29H	1864M90P04
962504	CFM56–7B	GFF5LLH4	2116M25P01	XAE7324U	2116M23P01	TMT1LPJ6	1864M90P04
962491	CFM56–7B	GFF5LPKJ	2116M25P01	XAE7116U	2116M23P01	TMT1RJ6E	1864M90P04
575348	CFM56–5B	GFF5LH68	2116M25P01	XAE6017U	2116M23P01	TMT1NLFE	1864M90P04
575243	CFM56–5B	GFF5KN5K	2116M25P01	XAE5290U	2116M23P01	TMT1JHJ7	1864M90P04
577604	CFM56–5B	GFF5L936	2116M25P01	XAE4312U	2116M23P01	TMT1JKK8	1864M90P04
577255	CFM56–5B	GFF5ECKK	1523M35P01	XAEG0763	1590M59P01	TMT1M7UD	1864M90P04
645551	CFM56–5B	GFF5LH4H	2116M25P01	XAE5738U	2116M23P01	TMT1NLF0	1864M90P04
779544	CFM56–5B	GFF5ELT0	1523M35P01	XAEW3361	1590M59P01	TMT3SD14	1864M90P05
575840	CFM56–5B	GFF5J4R8	1523M35P01	N/A	N/A	TMTD4155	1864M90P04
960395	CFM56–7B	GFF5G2WC	2116M25P01	XAEV5927	2116M23P01	TMTA1872	1864M90P04
575806	CFM56–5B	GFF5LLHT	2116M25P01	XAEW3261	1590M59P01	TMTD1698	1864M90P04
699126	CFM56–5B	GFF5DNJG	2116M25P01	XAER4768	2116M23P01	TMTA5963	1864M90P04
699277	CFM56–5B	GFF5GWRJ	2116M25P01	XAEBS962	2116M23P01	TMT4E107	1864M90P04
697355	CFM56–5B	GFF59NHM	1523M35P01	GWN04DF4	1590M59P01	TMT3SA87	1864M90P05
577182	CFM56–5B	GFF5DG9W	1523M35P01	XAEH5166	1590M59P01	TMT3S111	1864M90P05
779990	CFM56–5B	GFF5K300	2116M25P01	N/A	N/A	N/A	N/A
697483	CFM56–5B	GFF5LGT2	2116M25P01	XAE5993U	2116M23P01	TMT1MMNL	1864M90P04
577181	CFM56–5B	GFF5J4DH	2116M25P01	XAEGD205	2116M23P01	TMTD1836	1864M90P04
569701	CFM56–5B	GFF5HTFW	2116M25P01	XAEDU465	2116M23P01	TMTA8863	1864M90P04
569702	CFM56–5B	GFF5HTWC	2116M25P01	XAECR455	2116M23P01	TMT1H3E3	1864M90P04
802219	CFM56–7B	GFF5LH8R	2116M25P01	XAE6050U	2116M23P01	TMT1MHCE	1864M90P04
643567	CFM56–5B	GFF5LMWK	2116M25P01	XAE6981U	2116M23P01	TMT1U28M	1864M90P04
573567	CFM56–5B	GFF5JARC	2116M25P01	N/A	N/A	N/A	N/A
643851	CFM56–5B	GFF5LN01	2116M25P01	XAE6899U	2116M23P01	TMT1U0J7	1864M90P04
699992	CFM56–5B	N/A	N/A	XAEHP389	2116M23P01	N/A	N/A
645978	CFM56–5B	GFF5KN5N	2116M25P01	XAE5574U	2116M23P01	TMT1JKJJ	1864M90P04
643446	CFM56–5B	GFF5L8K8	2116M25P01	XAE5761U	2116M23P01	TMT1M7UJ	1864M90P04
643447	CFM56–5B	GFF5L9PN	2116M25P01	XAE5757U	2116M23P01	TMT1MGNL	1864M90P04
699642	CFM56–5B	GFF5L9PR	2116M25P01	XAE6316U	2116M23P01	TMT1MNA8	1864M90P04
643470	CFM56–5B	GFF5LKEP	2116M25P01	XAE6406U	2116M23P01	TMT1RJ7P	1864M90P04
699283	CFM56–5B	GFF5L9P9	2116M25P01	XAE5741U	2116M23P01	TMT1JNTP	1864M90P04
643730	CFM56–5B	GFF5LL3W	2116M25P01	XAE6507U	2116M23P01	TMT1PN4H	1864M90P04
699279	CFM56–5B	GFF5LE8P	2116M25P01	XAE6282U	2116M23P01	TMT1L01A	1864M90P04
699644	CFM56–5B	GFF5LE41	2116M25P01	XAE6311U	2116M23P01	TMT1PG4N	1864M90P04
643479	CFM56–5B	GFF5LFDA	2116M25P01	XAE6892U	2116M23P01	TMT1JLU6	1864M90P04
643635	CFM56–5B	GFF5LN4R	2116M25P01	XAE6811U	2116M23P01	TMT1U0HR	1864M90P04
643633	CFM56–5B	GFF5LMJ9	2116M25P01	XAE6568U	2116M23P01	TMT1JKFH	1864M90P04

TABLE 1 TO PARAGRAPH (g)—AFFECTED PARTS—Continued

Engine S/N	Engine model	CDP seal		HPC stage 3 disk		HPT rear shaft	
		S/N	P/N	S/N	P/N	S/N	P/N
699867	CFM56–5B	GFF5LN9E	2116M25P01	XAE6932U	2116M23P01	TMT1UNLM	1864M90P04
643267	CFM56–5B	GFF5MH2	2116M25P01	XAE7182U	2116M23P01	TMT1U296	1864M90P04
779533	CFM56–5B	GFF5J6MH	2116M25P01	XAEGD645	2116M23P01	TMTD2505	1864M90P04
643444	CFM56–5B	GFF5LN7D	2116M25P01	N/A	N/A	TMT1U9RJ	1864M90P04
699887	CFM56–5B	GFF5LKGP	2116M25P01	XAE6818U	2116M23P01	TMT1U0HU	1864M90P04

Note 1 to paragraph (g): Table 1 to paragraph (g) of this AD includes, for information only, the engine serial numbers (engine S/N) and engine models on which the affected parts were installed.

(h) Installation Prohibition

(1) After the effective date of this AD, do not install any CDP seal, HPC stage 3 disk, or HPT rear shaft having a P/N and S/N specified in Table 1 to paragraph (g) of this AD on any engine.

(2) After the effective date of this AD, do not install any engine having a CDP seal, HPC stage 3 disk, or HPT rear shaft having a P/N and S/N specified in Table 1 to paragraph (g) of this AD installed on any airplane.

(i) Definition

For the purposes of this AD, a part eligible for installation is any CDP seal, HPC stage 3 disk, or HPT rear shaft that does not have a P/N and S/N specified in Table 1 to paragraph (g) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(l) Material Incorporated by Reference

None.

Issued on March 18, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06080 Filed 3–19–24; 11:15 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 170

[Docket No. FDA–2021–N–0403]

RIN 0910–AI01

Food Additives: Food Contact Substance Notification That Is No Longer Effective

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending its regulations relating to the procedures for determining that a premarket notification for a food contact substance (FCN) is no longer effective. The final rule provides additional reasons that could form the basis for FDA to determine that an FCN is no longer effective. The final rule also ensures that manufacturers or suppliers have the opportunity to provide input before we determine that an FCN is no longer effective. We are making these changes to allow FDA to respond better to new information on the safety and use of food contact substances (FCSs), as well as manufacturers' business decisions, and also improve the efficiency of the premarket notification program.

DATES: This rule is effective May 21, 2024.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:

With regard to the final rule: Sharon Koh-Fallet, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 301–796–7732; or Carrol Bascus, Center for Food Safety and Applied Nutrition (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

With regard to the information collection: 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:

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I. Executive Summary

A. Purpose of the Final Rule

We are amending our regulations to provide additional reasons that may be the basis for FDA to determine that an FCN is no longer effective and to provide the manufacturer or supplier of the substance an opportunity to provide input before we make such a determination. These changes will create administrative mechanisms to improve the efficiency of the premarket notification program for food contact substances (FCSs). We are also amending related confidentiality of information regulations.

B. Summary of the Major Provisions of the Final Rule

The final rule provides reasons other than safety as the basis on which we may determine that an FCN is no longer effective. These reasons include instances where the production, supply, or use of the FCS for its intended use by the manufacturer or supplier has ceased or will cease (referred to in this rule as ''abandonment''), or where the use of an FCS identified in an FCN is either authorized by a food additive regulation or is the subject of an issued Threshold of Regulation (TOR) exemption. The final rule also provides the manufacturer or supplier, who submitted an FCN, the opportunity to address our safety concerns or to otherwise show why an FCN should continue to be effective before we could determine that an FCN is no longer effective, resulting in the use no longer being authorized. Additionally, the final rule amends the confidentiality of information provisions to provide for the disclosure of certain information relating to our determination that an FCN is no longer effective.

C. Legal Authority

We are issuing the final rule consistent with our authority in sections 201, 409, and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 348, and 371(a)).

D. Costs and Benefits

The final rule amends the food additive regulations relating to premarket notifications for FCSs also known as Food Contact Notifications (FCNs) and the procedures by which we determine that an FCN is no longer effective. The final rule will allow manufacturers or suppliers of FCSs to request that FDA determine that an FCN is longer effective for reasons other than safety. We expect that cost savings of the final rule take the form of a reduced time burden to FCS manufacturers and suppliers responding to FDA's safety concerns with information that they no longer produce, use, or supply the FCS for the intended use. The final rule will also reduce the time burden to FDA for the review of such information. We estimate that cost savings of the final rule to manufacturers and suppliers and FDA range from zero to $0.4 million, with a central estimate of $0.1 million, annualized over 10 years at a 2 percent discount rate. We estimate that there will be little to no costs associated with the final rule.

II. Background

A. Need for the Regulation/History of This Rulemaking

Our regulations at § 170.105 set forth the process by which FDA may determine that an FCN is no longer effective. This determination currently only applies when data or other information demonstrating the intended use of an FCS is no longer safe. Presently, our regulations do not provide reasons other than safety as the basis for FDA to determine that an FCN is no longer effective. Also, our regulations do not provide manufacturers or suppliers the opportunity to show why an FCN should continue to be effective prior to FDA making a determination that the FCN is no longer effective. Rather, manufacturers and suppliers must respond to FDA after we provide notice of our determination that the FCN is no longer effective.

In the **Federal Register** of January 26, 2022 (87 FR 3949), we published a proposed rule that would amend § 170.105 to address these issues and better enable FDA to respond to new information on the safety and use of FCSs. We proposed additional reasons to permit us to make a determination that an FCN is no longer effective for reasons other than safety. We proposed that a manufacturer or supplier could request that we determine an FCN to no longer be effective because it has ceased (or intends to cease) producing, supplying, or using an FCS for the intended use. To reduce confusion created by duplicative authorizations, we proposed to remove effective FCNs for intended uses already authorized by food additive regulations or the subject of an issued TOR exemption. We proposed to provide the manufacturer or supplier of an FCS an opportunity to provide information before FDA makes a determination that an FCN is no longer effective. Additionally, we explained that the proposed changes to § 170.105 would create administrative efficiencies in the FCN program. We also proposed to amend the confidentiality of information provisions in § 170.102 to address the disclosure of certain information related to FDA's determination that an FCN is no longer effective.

B. Summary of Comments to the Proposed Rule

The proposed rule provided a 60-day comment period. We received fewer than 20 comments on the proposed rule. The comments were from individuals, a consumer advocacy group, a law firm, and an industry trade association. The comments addressed topics including: (1) improved efficiency and the reduced burden on industry; (2) FDA's authority to provide additional reasons for determining that an FCN is no longer effective; (3) the circumstances under which FDA would make a determination based on abandonment; (4) providing manufacturers or suppliers the opportunity to respond to FDA's safety questions before determining an FCN is no longer effective; (5) the confidentiality provisions; (6) providing an opportunity for affected parties to comment on the timeframe for food packaging to clear the market; and (7) requesting an additional basis for declaring an FCN no longer effective.

C. General Overview of the Final Rule

The final rule establishes procedures to enable FDA to respond better to new information on the safety and use of FCSs. The final rule ensures that a manufacturer or supplier has the opportunity to provide relevant information to FDA before we make a safety determination. The final rule also permits us to make a determination that an FCN is no longer effective for reasons other than safety. FDA can reduce duplicative authorizations by removing effective FCNs for intended uses authorized by food additive regulations or the subject of an issued TOR exemption. In addition, the final rule will allow FDA to determine that an FCN is no longer effective based on abandonment either: (1) in response to a request from a manufacturer or supplier because it has ceased (or intends to cease) producing, supplying, or using an FCS for the intended use or (2) based on other information available to FDA that a manufacturer or supplier has stopped producing, supplying, or using an FCS for the intended use.

We anticipate that a manufacturer or supplier may make such a request

because it no longer needs the authorization or because abandonment could be less burdensome than addressing potential safety concerns. Further, because the FCS would no longer be produced, supplied, or used for the intended use, declaring an FCN as no longer effective based on abandonment rather than based on safety may be a more effective and efficient use of FDA's resources. However, we may decline such a request if we determine there is a safety concern that would be more appropriately addressed by FDA making a declaration that an FCN is no longer effective based on a determination that the intended use of the FCS is no longer safe. We would not declare an FCN no longer effective based on abandonment if the manufacturer or supplier temporarily ceases production or marketing and informs us of their intention to resume producing, supplying, or using the FCS for the intended use in the future. Additionally, the final rule amends the confidentiality of information provisions to provide for the disclosure of certain information relating to our determination that an FCN is no longer effective.

III. Legal Authority

We are issuing this final rule consistent with our authority in sections 201, 409, and 701(a) of the FD&C Act. The final rule provides reasons other than safety as the basis for which we may determine that an FCN is no longer effective. The final rule modifies the procedures by which FDA determines that an FCN is no longer effective and amends the regulation relating to confidentiality of information.

The FD&C Act defines ''food additive,'' in relevant part, as any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of food or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized by experts as safe under its intended use (section 201(s) of the FD&C Act). Food additives include ''food contact substances,'' which are defined as any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food (section 409(h)(6) of the FD&C Act).

A food additive is deemed unsafe unless that substance and its use conform with a regulation issued under section 409 of the FD&C Act or there is an FCN submitted under section 409(h) of the FD&C Act that is effective (section 409(a) of the FD&C Act). Section 409(h) of the FD&C Act sets forth the procedure for FCNs.

Under section 409(i) of the FD&C Act, FDA must prescribe by regulation the procedure by which FDA may deem an FCN to no longer be effective (sections 409(i) and 1003(d) of the FD&C Act) (21 U.S.C. 348(i) and 393(d)). Section 701(a) of the FD&C Act gives us the authority to issue regulations for the efficient enforcement of the FD&C Act.

IV. Comments on the Proposed Rule and FDA Response

A. Introduction

We received fewer than 20 comments on the proposed rule. The comments were from individuals, a consumer advocacy group, a law firm, and an industry trade association.

We describe and respond to the comments in sections B through G of this document. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Description of General Comments

Several comments made general remarks supporting or opposing the proposed rule without focusing on a particular proposed provision.

(Comment 1) Some comments expressed general support for the proposed rule. One comment stated that the proposed rule ''would make FDA more efficient as well as putting less strain on manufacturers.'' Another comment said that ''there are cost savings to both manufacturers and suppliers as well as the FDA.'' Another comment stated that the rule would ''be an overall help to public health.''

(Response 1) We agree that the final rule will improve the efficiency of FDA's oversight of FCSs. This improved efficiency may benefit public health in helping FDA to use its resources better on oversight of the FCN program and FCS regulation.

C. Comments on a Change to the Process for Obtaining Data or Other Information To Demonstrate the Intended Use of a Food Contact Substance Is No Longer Safe

The proposed rule, at § 170.105(a)(1)(i), stated that we would inform the manufacturer or supplier specified in the FCN, in writing, of our concerns regarding the safety of the intended use of the FCS. We proposed that we would specify a date by which the manufacturer or supplier must provide data or other information to address the safety concerns. The proposed rule, at § 170.105(a)(1)(ii), stated that if the manufacturer or supplier fails, by the specified date, to supply the data or other information necessary to address the safety concerns regarding the notified use, we may determine that the FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe.

(Comment 2) One comment questioned the need for a procedural change allowing a manufacturer or supplier to provide data or other information to respond to our safety concerns, given the current authorities provided by § 170.105. The comment stated that manufacturers already have the opportunity to provide input before FDA makes a determination that an FCN is no longer effective based on safety.

(Response 2) We agree that a manufacturer or supplier already has the opportunity to provide input to FDA; however, presently, we are not required to provide a manufacturer or supplier an opportunity to address safety concerns until *after* FDA has made a determination. We proposed a procedural change to the existing regulation at § 170.105(b) to help ensure that we have all the relevant information *before* making a determination on whether an FCN should remain effective. In the final rule, if the manufacturer or supplier fails to supply either the data or other information necessary to address our safety concerns, by the specified date, we may make a determination that the FCN is no longer effective. However, we will make the determination only after we have given the manufacturer or supplier an opportunity to provide data or other information to respond to our safety questions.

(Comment 3) Two comments opposed giving a manufacturer or supplier the opportunity to respond to safety concerns. One comment stated that a manufacturer or supplier should not

have a say in whether an FCN is effective and making a safety determination. One comment asserted that this would ''give manufacturers more room for exemptions from safety precautions.''

(Response 3) The final rule provides manufacturers and suppliers the opportunity to demonstrate whether an FCN should remain effective, including by providing information pertaining to safety. The manufacturer or supplier has the responsibility to demonstrate that the intended use of the FCS is safe. FDA will evaluate the information provided by manufacturers and suppliers before making a determination about the status of an FCN or the safety of an FCS use. The final rule continues to provide that we can declare an FCN no longer effective if the manufacturer or supplier fails to supply the necessary data or information to address our safety concerns.

D. Comments on Determining a Premarket Notification for a Food Contact Substance Is No Longer Effective Due to Abandonment

The proposed rule would provide that a manufacturer or supplier may request in writing that FDA determine that an FCN is no longer effective on the basis that it has ceased, or intends to cease by a specified date, producing, supplying, or using an FCS for the intended food contact use in the United States (see proposed § 170.105(a)(2)(i)(A)). It also proposed that if other data or information available to FDA demonstrate that a manufacturer or supplier no longer produces, supplies, or uses an FCS for the intended use in the United States, we would inform, in writing, the manufacturer or supplier specified in the FCN and provide them an opportunity to respond before we could determine that the FCN is no longer effective (see proposed § 170.105(a)(2)(ii)(A)).

(Comment 4) One comment disagreed with our proposal but stated that there is a need for clarity regarding the status of an FCN after a manufacturer or supplier notifies FDA of its intent to withdraw products from the market that are the subject of such an FCN. The comment recommended an alternate amendment. The comment's proposed amendment would require a manufacturer or supplier—if it previously notified FDA in writing of its intent to cease introduction into interstate commerce and delivery for introduction into interstate commerce of any FCS that is the subject of an effective FCN—to submit a new FCN before reintroducing the FCS for the same intended use into interstate commerce.

(Response 4) We do not agree with the amendment offered by the comment because it would create duplicate authorizations. Under our existing regulations, if a manufacturer or supplier notifies us of their intent to cease production, supply, or use of an FCS for reasons other than a determination by FDA that an FCN is no longer effective due to safety concerns, the FCN remains effective for its intended use. In the proposal submitted in the comment, an FCN would remain effective after the listed manufacturer or supplier informs FDA of their intent to cease introduction of the FCS into interstate commerce. The proposal would also require a new FCN to be submitted if the manufacturer or supplier would reintroduce the FCS into interstate commerce; however, the original FCN is still effective. Therefore, the proposed amendment would create duplicative authorizations. In contrast, FDA's final rule will allow us to declare that an FCN is no longer effective for reasons other than safety. If a manufacturer or supplier decides to reintroduce the FCS into interstate commerce after we determined it no longer effective, they would be required to submit a new FCN.

(Comment 5) One comment stated that a manufacturer or supplier may withdraw products covered by FCNs from the market for any reason, and that it can also ''voluntarily withdraw the FCN and dispose of the notification if it so desires.'' The comment noted that under the statute such companies ''may'' file an FCN and therefore withdrawal of an FCN should also be permitted. The comment provided as example that under section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act [Pub. L. 80–104] an applicant may initiate cancellation of a registration. The comment stated that it is ''not appropriate for manufacturers/suppliers of FCSs covered by effective FCNs to be constrained by FDA in their business decisions.''

(Response 5) We agree that a company may remove products covered by FCNs from the market. The final rule does not regulate a company's decision to stop the production, supply, or use of FCSs that are authorized under effective FCNs. However, we disagree that a manufacturer or supplier may withdraw an effective FCN under the current regulation. Furthermore, the comment does not explain what the regulatory status of the FCS would be under such a scenario. Section 409 of the FD&C Act does not provide for withdrawal of an effective FCN and directs FDA to prescribe, by regulation, the procedure by which we are to deem an FCN to no longer be effective. Consistent with the statute, we are amending our procedural regulations to provide for abandonment as a basis for determining that an FCN is no longer effective. Under the final rule, a manufacturer or supplier will be able to request that we determine that an FCN is no longer effective based on abandonment.

(Comment 6) A few comments opposed the provision to allow FDA to declare an FCN no longer effective for reasons of abandonment and asserted that FDA does not have this authority. The comments asserted that, under section 409 of the FD&C Act, we can only determine an FCN to no longer be effective based on safety. One comment stated that it would be appropriate to grant a request based on abandonment from the manufacturer or supplier. Another comment asserted that the FD&C Act limits FDA's food additive review to safety. The comment also referred to our regulation at 21 CFR 171.130, which allows for food additive regulations to be repealed or amended for reasons other than safety. The comment asserted that section 409(i) of the FD&C Act, which states that FDA shall, by regulation, prescribe the procedure by which FDA may deem an FCN to no longer be effective, means that FCNs are to be treated differently from food additive regulations and that FDA is bound by the safety standard in section 409(c)(3)(A) of the FD&C Act for FCNs.

(Response 6) We disagree with the comments. The final rule is consistent with our authority in sections 201, 409, and 701(a) of the FD&C Act. Section 201(s) of the FD&C Act defines ''food additive.'' Section 409(h) of the FD&C Act specifies the procedures for the FCN program. Food additives include ''food contact substances,'' which are defined in section 409(h)(6) of the FD&C Act as any substance intended for use as a component of materials used in manufacturing, packing, packing, transporting, or holding food if such uses is not intended to have any technical effect in such food. Under section 409(i) of the FD&C Act, FDA must prescribe by regulation the procedure by which FDA may deem an FCN to no longer be effective. In addition, section 701(a) of the FD&C Act gives FDA the authority to issue regulations for the efficient enforcement of the FD&C Act. These provisions provide us authority to establish and modify administrative procedures to ensure the efficiency of the food contact notification program. As one comment noted, FDA has already established a

regulation under which we may repeal a food additive regulation based on abandonment. Likewise, nothing in section 409(i) of the FD&C Act precludes FDA from establishing procedures by regulation to deem an FCN no longer effective based on reasons other than safety.

(Comment 7) Some comments opposed the proposed revisions that would allow FDA to determine that an FCN is no longer effective because production, supply, or use of the FCS has stopped or will stop. One comment expressed concerns that FDA would determine that an FCN is no longer effective without considering whether a manufacturer or supplier or their customer has significant stock of an FCS on hand. The comment questioned whether FDA would make the determination without regard to whether the manufacturer or supplier intends to resume production, at a future date, based on market conditions. Another comment expressed concerns about the reasons third parties might provide information and data to FDA to support a determination that an FCN is no longer effective based on abandonment. For example, the commenter stated, ''if any third party can provide FDA with information that a product that is the subject of an effective FCN is not now being manufactured for food-contact applications, such substances could be targeted for removal without demonstrating a safety concern.''

(Response 7) We expect that, in most cases, a determination based on abandonment will be in response to a request from a manufacturer or supplier, rather than based on information from a third party. However, to address the concerns raised by the comments with respect to information provided by a third party, we have amended the provision for abandonment that is based on other data or information available to FDA. We have added ''or intends to continue in the future'' to make clear that FDA would not make a determination based on abandonment if the manufacturer or supplier informs us that it intends to resume in the future the production, supply, or use of an FCS for the intended use in the United States (see § 170.105(a)(2)(ii)(A) and (B)). If we receive information from a third party or through other means, as outlined in § 170.105(a)(2)(ii)(A), we will inform, in writing, the affected manufacturer or supplier specified in the FCN before we could determine that the FCN is no longer effective. In cases where a manufacturer or supplier informs us that its suspension of the production, supply, or use is only temporary, we will not declare an FCN no longer effective on the basis of abandonment. This information must be provided to FDA in writing, within the specified timing, as required under § 170.105(a)(2)(ii).

With respect to the comments about supplies of an FCS held by a manufacturer or supplier, or its customers, the final rule provides for compliance dates to address these situations. When a manufacturer or supplier requests that we determine that an FCN is no longer effective because it has ceased or plans to cease producing, supplying, or using an FCS, we will confirm with the manufacturer or supplier the date it has ceased or that it intends to cease production, supply, or use. Under the final rule, if we determine that an FCN is no longer effective, we will publish a notice announcing the determination in the **Federal Register**. The FCN will no longer be effective on the date of publication of the notice. If the manufacturer or supplier informs us that it intends to cease production, supply, or use at a future date, we will provide for a separate compliance date that is the future date specified by the manufacturer or supplier, and this compliance date will be reflected in the **Federal Register**. To take into consideration inventory held by downstream customers, as provided in § 170.105(b), FDA may also include a separate compliance date in the **Federal Register** for the use of the FCS in food contact articles.

(Comment 8) One comment opposed the provision to allow FDA to determine an FCN is no longer effective based on abandonment, absent a request by the manufacturer or supplier, because, according to the comment, it would cause potential harm to a business.

(Response 8) We anticipate that a determination that an FCN is no longer effective based on abandonment will not cause potential harm to businesses because the majority of these actions will be in response to a manufacturer or supplier's specific request because it has ceased or plans to cease production of the FCS. However, there may be rare cases where the manufacturer or supplier is not available because the business no longer exists. In such instances, we may determine that an FCN is no longer effective based on abandonment. We note that § 170.100(d) (21 CFR 170.100(d)) requires a manufacturer or supplier for which a notification is effective to keep a current address on file with FDA.

(Comment 9) One comment stated that the proposed rule does not assure that a manufacturer or supplier will have adequate time to respond to our request for data and information to demonstrate that they continue to produce, supply, or use the FCS for the intended use in the United States. The comment stated that a ''manufacturer or supplier may be forced to comply with an arbitrary or inadequate deadline'' to provide information to FDA.

(Response 9) In response to this comment, we revised § 170.105(a)(2)(ii), which describes the response of a manufacturer or supplier to FDA, to remove the reference to providing ''data and information to demonstrate'' a continued use, and instead are requiring that the manufacturer or supplier respond in writing indicating whether it continues, or intends to continue in the future, to produce, supply, or use an FCS for the intended use in the United States. We anticipate that there will be minimal burden on a manufacturer and supplier to provide us with such a statement. We will provide an appropriate amount of time for manufacturers and suppliers to respond, based on the information available to us at that time. We will consider a request for additional time from a manufacturer or supplier.

(Comment 10) One comment stated that if an FCN is declared no longer effective based on abandonment, a ''substantially-delayed compliance deadline would be appropriate, to assure that lawfully manufactured food packaging has a sufficient opportunity to work its way through channels of trade.'' The comment further stated that affected parties must be provided with an opportunity to provide comments to FDA on the length of time that will be required for food contact articles to clear channels of trade.

(Response 10) As provided in § 170.105(b), if we determine it would be protective of public health, we may include a separate compliance date for the use of the FCS in food contact articles. We believe the manufacturer or supplier is in a position to estimate the time it will take for the affected FCS and food contact articles to clear the U.S. market. We expect that the manufacturer or supplier will confer with its downstream customers to ascertain the time it will take to exhaust their inventory and clear the U.S. market. Therefore, in response to the comment, we revised § 170.105(a)(2)(i)(A) to require that the request from a manufacturer or supplier include information or a basis to support the estimated date for the FCS, as well as food contact articles that contain such FCS, produced, supplied, or used by the manufacturer or supplier, to clear the U.S. market. This

information will help to inform a separate compliance date for the use of an FCS in food contact articles.

E. Comments on Determining a Premarket Notification for a Food Contact Substance Is No Longer Effective Because It Is Authorized by a Food Additive Regulation or Is the Subject of an Issued Threshold of Regulation Exemption

The proposed rule would create a new provision by which we may determine that an FCN is no longer effective because the intended use of the FCS is authorized by a food additive regulation (see proposed § 170.105(a)(3)). We explained that issuing a food additive regulation can be more efficient than reviewing multiple FCNs for the same FCS and for the same use.

Additionally, the proposed rule would create a new provision by which we may determine that an FCN is no longer effective because the intended use of the food contact substance is covered by a TOR exemption (see proposed § 170.105(a)(4)). We explained that FCNs are effective only for a specific manufacturer or supplier, and multiple manufacturers or suppliers often request FCNs for the same intended use of an FCS. In contrast, a TOR exemption can cover the use of an FCS for any manufacturer or supplier who meets the requirements of the TOR. We also explained that we will grant a TOR exemption only if the likelihood or extent of migration to food of a substance used in a food-contact article (*e.g.,* food-packaging or food processing equipment) is so trivial as not to require regulation of the substance as a food additive (see 21 CFR 170.39).

(Comment 11) One comment opposed the new provisions. The comment stated that the existing FCN program does not accept FCNs for review when the proposed use of the substance is authorized through a food additive regulation or the subject of an issued TOR exemption. The comment said that the new provision would therefore only be applicable to FDA-initiated authorizations for the purpose of determining that an existing effective FCN is no longer effective. The comment stated that section 409(h)(3)(A) of the FD&C Act requires that the FCN process be used except when we determine that submission and review of a petition is necessary to provide adequate assurance of safety. The comment said that we may not determine that an FCN is no longer effective because the intended use is authorized by a food additive regulation or the subject of an issued TOR exemption because the process ''runs counter to Congressional intent'' and ''contravenes Congress' explicit requirement that the FCN process shall be used for authorizing the marketing of a food-contact substance . . .''

(Response 11) We disagree with the comment. Section 409 of the FD&C Act establishes an FCN process as the primary means by which FDA regulates food additives that are FCSs. However, it does not preclude us from relying on authorizations provided under food additive regulations or issued TOR exemptions as a basis to determine that an FCN authorization is duplicative and may be declared no longer effective. Section 409(i) of the FD&C Act gives FDA authority to prescribe by regulation the procedure by which FDA may determine an FCN to no longer be effective. Further, section 701(a) of the FD&C Act gives FDA the authority to issue regulations for the efficient enforcement of the FD&C Act. Through these provisions, Congress provided FDA with the discretion and authority to establish and modify administrative procedures to ensure the efficiency of the authorization of the safe use of FCSs. The TOR exemption provides an alternative to regulate food additives that are FCSs. As described in the Senate report associated with the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the legislation by which Congress amended the FD&C Act to add the FCN program, explicitly left in place TOR exemptions and food additive regulations for FCSs (S. Rep. No. 105–43, at 46 (1997)).

Furthermore, authorizations of FCSs through food additive regulations or TOR exemptions, rather than through FCNs, may improve efficiency of our premarket programs because they are not specific to one manufacturer or supplier. As such, having these authorizations may reduce administrative burdens on FDA and on new manufacturers and suppliers of FCS for uses that we already determined are safe when manufactured or supplied for uses that comply with the listed limitations and specifications. Because an FCN would be duplicative of these authorizations, removing a duplicative FCN may help avoid confusion from other manufacturers or suppliers about whether they would also need to obtain authorization through the FCN program. Therefore, under the final rule we may determine that an FCN is no longer effective and remove the duplicate FCN from the inventory of effective FCNs, if it is the subject of a food additive regulation or the subject of an issued TOR exemption.

FDA would only take action after we inform the manufacturer or supplier specified in the FCN, in writing, that the intended use of the FCN is authorized by a food additive regulation or the subject of an issued TOR exemption. As explained in the proposed rule, the manufacturer or supplier would have the opportunity to demonstrate that the intended use is not authorized by a food additive regulation or the subject of an issued TOR exemption (87 FR 3949 at 3952 through 3954).

(Comment 12) One comment opposed the provision in the proposed rule that would allow us to determine that an FCN is no longer effective if it is the subject of an issued TOR exemption. The comment expressed concern about the process for granting TOR exemptions.

(Response 12) Our FCN regulations (see § 170.100(b)(2)) provide that FDA may choose not to accept an FCN if there is an issued TOR exemption for the intended use. Unlike an authorization provided under an effective FCN, which is specific to the manufacturer or supplier specified in the notification, a TOR exemption can be relied on for uses that comply with the limitations and specifications listed in the TOR exemption. The final rule, at § 170.105(a)(4), provides a corresponding provision that would allow FDA to declare an FCN no longer effective on the basis that this use is covered by an issued TOR exemption.

As for the comment pertaining to the process for granting a TOR exemption, we note that the process for granting a TOR exemption is not the subject of this rulemaking.

(Comment 13) One comment asserted that promulgating food additive regulations or issuing a TOR exemption to replace FCNs would result in the loss of manufacturer-specific information because new manufacturers would come to market without notification to FDA and that FDA would no longer have the benefit of the ''knowledge of which food contact substances have entered the market, who manufactured such substances, and in what amount.'' The comment said that this lack of notice and information would result in the loss of public safety benefits.

(Response 13) FDA would conduct research, gather and evaluate all relevant data, and complete the necessary analysis of an FCS before promulgating a food additive regulation or issuing a TOR exemption. We expect that we would have significant data or other information to support proposing a new food additive regulation or TOR exemption before doing so. Therefore, we do not agree that the loss of manufacturer-specific information would negatively affect public health.

(Comment 14) One comment stated that declaring an FCN as no longer effective based on an issued TOR exemption or food additive regulation would create undue burdens for industry because business documentation commonly includes references to FCN numbers. The comment stated that if FDA deems an FCN no longer effective for nonsafety reasons, this could create confusion in the marketplace. In addition, the comment stated that the companies who submitted an FCN would bear the burden and cost of data development to demonstrate safety, whereas if FDA issues a TOR exemption or a food additive regulation for that use, other companies will benefit. The comment noted that Congress specifically created a manufacturer-specific notification process for FCNs.

(Response 14) As we explained in response to Comment 12, section 409 of the FD&C Act does not preclude us from issuing a TOR exemption or a food additive regulation for the use of an FCS or from relying on these authorizations as a basis to determine that duplicative FCNs may be declared no longer effective.

FDA intends to establish and maintain a list of FCNs that are no longer effective (and the reason for the FDA's determination) on its website to limit confusion. The list will be available along with the current inventory of effective FCNs.

F. Comments on Confidentiality of Information Related to Premarket Notification for a Food Contact Substance

The proposed rule would amend § 170.102(e) to address the disclosure of certain information related to a notification, including information related to FDA's determination that an FCN is no longer effective. Specifically, proposed § 170.102(e)(1) would continue to make all safety and functionality data and information submitted with or incorporated by reference into the notification as well as all correspondence and written summaries of oral discussions relating to the notification available for public disclosure. Proposed § 170.102(e)(5) also would make all data, correspondence and written summaries of oral discussions relating to FDA's determination that an FCN is no longer effective available for public disclosure, unless the information is exempt under 21 CFR 20.61 (pertaining to trade secrets and commercial or financial information that is privileged or confidential).

(Comment 15) One comment disagreed with the proposed amendments to § 170.102. The comment stated that, besides the manufacturer's notice of market withdrawal, no new information would be provided to the FCN file, and, as such, the proposed amendments are not warranted.

(Response 15) The amendments to the confidentiality of information regulations are necessary to provide for disclosure of information related to manufacturer or supplier notifications and FDA's determination that an FCN is no longer effective for its intended use. Thus, the final rule contains the revisions to § 170.102 from the proposed rule with minor editorial changes.

(Comment 16) One comment supported the proposed change to § 170.102(e) to make publicly available data and information related to our determination that an FCN is no longer effective. The comment requested that this public disclosure not be limited to FCNs that are deemed no longer effective by FDA and be expanded to include all FCNs. The comment also emphasized that the public disclosure should entail timely publication to FDA's website, rather than public disclosure in response to a request under the Freedom of Information Act (FOIA).

(Response 16) The comment may have misunderstood our proposed change to § 170.102(e), which already addresses the public disclosure of information related to FCNs. The proposed rule would revise § 170.102(e) to address explicitly FCNs that FDA has determined are no longer effective; however, there is no difference in the public disclosure of this information. To make this clearer, we are further revising § 170.102(e) to include the reference to FCNs that are no longer effective in the same sentence as other FCNs. With respect to the comment asking FDA to disclose information about FCNs proactively on FDA's website instead of in response to a FOIA request, decisions about proactive disclosures are based on available resources and policy priorities. To ensure transparency, FDA will continue to maintain an inventory on its website that lists effective FCNs, and intends to maintain a second inventory that will list FCNs that are no longer effective (and the reason for FDA's determination).

G. Miscellaneous Comments

(Comment 17) Some comments stated that there is no need for this rule because the U.S. Department of Agriculture (USDA) can ''oversee such issues.''

(Response 17) We disagree. Pursuant to section 409(i) of the FD&C Act we, rather than USDA, have authority over FCSs.

(Comment 18) One comment asked about a pending citizen petition related to FDA's evaluation of cumulative effects of related substances. The pending citizen petition requests revisions to our regulations, including 21 CFR 170.101 (Information in a premarket notification for a food contact substance (FCN)).

(Response 18) The comment is outside of the scope of this rulemaking, as the purpose is to amend the process that we use to determine that an FCN is no longer effective.

(Comment 19) Some comments discussed the use of plastic and Styrofoam in food packaging generally.

(Response 19) The comments are outside the scope of this rulemaking and so we decline to address them.

(Comment 20) One comment requested that FDA revise the proposed rule to ''include notifiers' failure to systematically identify the class of chemically- or pharmacologically-related substances in the diet as sufficient for FDA to determine an FCN is no longer effective.'' The comment also made several recommendations for a ''revised proposed rule regarding food contact substance notifications.'' The recommendations for a revised proposed rule include: (1) requiring FDA to post our evaluation of the FCN as well as the FCN itself; (2) requesting periodic updates; (3) requiring manufacturers and suppliers to submit samples of their FCSs to FDA upon request; (4) including FDA's need for a sample as a reason to determine an FCN no longer effective; and (5) that FDA ''sunset an FCN to prompt an update.''

(Response 20) We decline to issue a revised proposed rule at this time and are not including these recommendations in the final rule because they are outside the scope of our rulemaking. With respect to the request that we post our evaluation of an FCN, as discussed in response to Comment 16, decisions about proactive disclosures are generally based on available resources and policy priorities.

H. Nonsubstantive Changes

On our own initiative, to maintain consistency and provide clarity with existing FCN program notifications and TOR exemptions, we are making nonsubstantive changes to the following:

- In § 170.102(e), we are making clarifying edits to the provision.
- In § 170.105(a)(2), we are replacing the words ''stopped'' and ''stop'' with ''ceased'' or ''cease,'' the terms used in

the FCN program identifying the FCNs that are not in interstate commerce.

- In § 170.105(a)(2)(ii)(A), because an FCN is specific to a manufacturer or supplier, we are revising the first sentence to add a reference to the manufacturer or supplier specified in the FCN.
- In § 170.105(a)(3)(i), we are revising the second sentence to clarify the data and information the manufacturer or supplier is to provide.
- In § 170.105(a)(4), we are replacing the words ''covered by a threshold of regulation exemption'' to ''the subject of an issued threshold of regulation exemption.''
- § 170.105(a)(4)(i), we are revising the second sentence to clarify the data and information the manufacturer or supplier is to provide.

V. Effective/Compliance Date(s)

The preamble to the proposed rule stated that we would make any final rule resulting from this rulemaking effective 60 days after its date of publication in the **Federal Register** (87 FR 3949 at 3954).

We did not receive any comments on the proposed effective date for the final rule. Therefore, the final rule will become effective on May 21, 2024.

VI. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801, Pub. L. 104–121), the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are ''significant'' under Executive Order 12866, section 3(f)(1) (as amended by Executive Order 14094), if they ''have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of [the Office of Information and Regulatory Affairs (OIRA)] for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.'' OIRA has determined that this final rule is not a significant regulatory action under Executive Order 12866, section 3(f)(1).

A rule is ''major'' under the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act if it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in the Congressional Review Act. OIRA has determined that this final rule is not a major rule under the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule is unlikely to impose a substantial burden on the affected small entities, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated impacts, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that will meet or exceed this amount.

B. Summary of Cost and Benefits

We expect the final rule to lead to cost savings for manufacturers and suppliers of FCSs and FDA. The final rule would revise FDA's current process of determining whether an FCN is no longer effective. The final rule would provide manufacturers and suppliers the opportunity to demonstrate why an FCN should continue to be effective before we could determine that an FCN is no longer effective. Additionally, the final rule would revise the current process to cover situations in which it is determined that an FCN is no longer effective for reasons other than safety, including that a manufacturer or supplier may request that FDA determine that an FCN is no longer effective on the basis that the manufacturer or supplier no longer produces, supplies, or uses the FCS for the intended use. Cost savings will be incurred by manufacturers and suppliers of FCSs who will be able to request that FDA determine the FCN is no longer effective for reasons other than safety. Cost savings will take the form of a decreased time burden to FCS manufacturers and suppliers responding to FDA's safety concerns with information that they no longer produce, use, or supply the FCN for the intended use. FDA will also experience cost savings from being able to act more efficiently upon such a request by the manufacturer or supplier. As the revisions in the final rule would not require significant additional action to be taken by manufacturers and suppliers, we expect the costs of the final rule to be minimal.

The estimated total cost savings of the final rule are estimated in 2021 U.S. dollars and range from zero to $0.4 million, with a central estimate of $0.1 million, annualized at 2 percent over 10 years. We estimate that the costs of the final rule are minimal. The cost savings and costs of the final rule are summarized in table 1.

TABLE 1—SUMMARY OF COST SAVINGS, COSTS, AND DISTRIBUTIONAL EFFECTS OF FINAL RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Cost Savings:							
One-time Monetized millions/year							
Annualized Quantified	$0.1M	$0	$0.4M	2021	2	10	
Qualitative							
Costs:							
Annualized							
Monetized millions/year							

TABLE 1—SUMMARY OF COST SAVINGS, COSTS, AND DISTRIBUTIONAL EFFECTS OF FINAL RULE—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Annualized							
Quantified							
Qualitative			$0	2021		10	
Transfers:							
Federal Annualized							
Monetized $millions/year							
	From:			To:			
Other Annualized							
Monetized $millions/year							
	From:			To:			

Effects:
State, Local, or Tribal Government:
Small Business: Increased cost savings of zero to $147.31 per affected small entity.
Wages:
Growth:

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 1) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

The final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Food Contact Substance Notification System; OMB Control Number 0910–0495—Revision.

Description: Section 409(h) of the FD&C Act establishes a premarket notification process for FCSs. Section 409(h)(6) of the FD&C Act defines a ''food contact substance'' as any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food. Section 409(h)(3) of the FD&C Act states that the notification process be utilized for authorizing the marketing of FCSs except when: (1) the Secretary of HHS (Secretary) determines that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the FD&C Act is necessary to provide adequate assurance of safety or (2) the Secretary and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the FD&C Act requires that a notification include: (1) information on the identity and the intended use of the FCS and (2) the basis for the manufacturer's or supplier's determination that the FCS is safe under the intended use. FDA regulations at part 170 (21 CFR part 170) specify the information that a notification must contain.

The final rule amends the procedure by which we determine that an FCN is no longer effective. The information collection will cover situations that entail the potential reporting of additional data or other information by manufacturers or suppliers of FCSs. The final rule will augment the existing information collection that covers the FCN program at part 170, subpart D.

Description of Respondents: Respondents to the information collection are manufacturers and suppliers of FCSs sold in the United States. Respondents are from the private sector (for-profit businesses).

We estimate the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
170.105(a); Manufacturer or supplier responds to FDA by providing a written response and additional data or information to demonstrate that the FCN should continue to be effective	2	1	2	75	150
170.105(a)(2)(i); Manufacturer or supplier requests that FDA determine that the FCN should no longer be effective based on nonsafety reasons	5	1	5	2	10

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Total	.....	.....	.....	.....	160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates in table 2 are based on our experience with our Food Contact Substance Notification Program and are unchanged from our estimates in the proposed rule.

We will inform the affected manufacturers or suppliers of the specified FCN about data or other information that their FCSs may: (1) not be safe for its intended use; (2) have stopped being produced, supplied, or used as an FCS for its intended use; (3) be authorized by a food additive regulation; or (4) be the subject of an issued TOR exemption. As such, we may determine that the specified FCN may no longer be effective for its intended use unless the affected manufacturer or supplier provides additional data or other information to demonstrate that the FCN should continue to be effective. In row 1, we estimate that, annually, two respondents will each spend about 75 hours preparing a written response followed by submission of additional data or information to demonstrate that the FCN should continue to be effective for a total of 150 hours (2 respondents × 75 hours). In the existing information collection for our Food Contact Substance Notification Program (OMB control number 0910–0495; 87 FR 7190 (February 8, 2022)), we estimate that it may take up to 150 hours to prepare and submit an FCN depending on the complexity of the submittal. We assume the time to prepare a response will take about half the time of the initial submittal because the manufacturer or supplier should already have compiled and have access to most, if not all the information demonstrating that their FCN should continue to be effective and remains safe for its intended use.

The final rule will allow a manufacturer or supplier to request that FDA determine that their FCN is no longer effective on the basis that the manufacturer or supplier no longer produces, supplies, or uses the FCS for the intended use. We believe a manufacturer or supplier will not need much time to prepare such a request as it should already have access to information that it has ceased or intends to no longer produce, supply, or use the FCS for the intended use. Based on the Final Regulatory Impact Analysis, we estimate that five respondents will voluntarily request that FDA determine that their FCN is no longer effective (Ref. 1). Accordingly, in row 2, we estimate that five respondents will each submit 1 request to us per year with each request taking 2 hours to prepare for a total of about 10 hours (2 respondents × 5 hours).

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act of 1995. Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have Tribal implications as defined in the Executive order and, consequently, a Tribal summary impact statement is not required.

XI. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; it is also available electronically at *https://www.regulations.gov/.* Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. FDA, ''Food Additives: Food Contact Substance Notification That Is No Longer Effective, Final Regulatory Impact Analysis, Regulatory Flexibility Analysis.'' Also available at: *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

List of Subjects in 21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 170 is amended as follows:

PART 170—FOOD ADDITIVES

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

■ 2. Amend § 170.102 by revising the section heading and paragraphs (e) introductory text and (e)(1) and (5) to read as follows:

§ 170.102 Confidentiality of information related to premarket notification for a food contact substance (FCN).

* * * * *

(e) The following data and information are available for public disclosure, unless extraordinary circumstances are shown, on the 121st day after receipt of the notification by FDA, except that no data or information are available for public disclosure if the

FCN is withdrawn under § 170.103; and on the date of publication in the **Federal Register** of an FDA determination that an FCN is no longer effective.

(1) All safety and functionality data and information submitted with or incorporated by reference into the notification, or submitted in reference to an effective FCN. Safety and functionality data include all studies and tests of a food contact substance on animals and humans and all studies and tests on a food contact substance for establishing identity, stability, purity, potency, performance, and usefulness.

* * * * *

(5) All correspondence and written summaries of oral discussions relating to the notification or to FDA's determination that an FCN is no longer effective, except information that is exempt under § 20.61 of this chapter.

* * * * *

■ 3. Revise § 170.105 to read as follows:

§ 170.105 The Food and Drug Administration's (FDA's) determination that a premarket notification for a food contact substance (FCN) is no longer effective.

(a) FDA may determine that an FCN is no longer effective if:

(1) Data or other information available to FDA, including data not submitted by the manufacturer or supplier, demonstrate that the intended use of a food contact substance is no longer safe.

(i) FDA will inform the affected manufacturer or supplier specified in the FCN, in writing, of FDA's concerns regarding the safety of the intended use of the food contact substance. FDA will specify the date by which the manufacturer or supplier must provide FDA with data or other information to respond to FDA's safety concerns.

(ii) If the manufacturer or supplier fails, by the specified date, to supply either the data or other information necessary to address the safety concerns regarding the notified use or a request described in paragraph (a)(2)(i) of this section, FDA may determine that the FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe.

(iii) If FDA denies a request described in paragraph (a)(2)(i) of this section, and FDA had previously informed the manufacturer or supplier of FDA's concerns regarding the safety of the intended use of the food contact substance as described in paragraph (a)(1)(i) of this section, FDA may determine that an FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe. Alternatively, FDA may provide the manufacturer or supplier with additional time to provide FDA with data or other information to respond to FDA's safety concerns. If the manufacturer or supplier fails, by the specified date, to supply the data or other information necessary to address the safety concerns regarding the notified use, FDA may determine that the FCN is no longer effective because there is no longer a basis to conclude that the intended use is safe.

(2) Data or other information available to FDA demonstrate that the manufacturer or supplier specified in the FCN has ceased or intends to cease producing, supplying, or using a food contact substance for the intended use. Such data or other information includes, but is not limited to:

(i) A request from the manufacturer or supplier.

(A) The manufacturer or supplier specified in the FCN may request in writing that FDA determine that an FCN is no longer effective on the basis that it has ceased producing, supplying, or using a food contact substance for the intended food contact use in the United States or that it intends to cease producing, supplying, or using a food contact substance for the intended food contact use in the United States by a specified date. The request must include information or a basis to support the estimated date for the food contact substance, as well as food contact articles that contain such food contact substance, produced, supplied, or used by the manufacturer or supplier to clear the U.S. market. FDA will notify the manufacturer or supplier whether FDA is granting the request.

(B) If FDA grants the request, FDA may determine that the FCN is no longer effective on the basis that the manufacturer or supplier has ceased producing, supplying, or using a food contact substance for the intended use in the United States or that it intends to cease producing, supplying, or using a food contact substance for the intended food contact use in the United States by a specified date. When such a request is based on the intent to cease producing, supplying, or using a food contact substance for the intended food contact use in the United States at a future date, FDA will include in the notice described in paragraph (b) of this section the date specified in the request as the compliance date by which the manufacturer or supplier will cease producing, supplying, or using the food contact substance for the intended food contact use in the United States.

(ii) Other data or information available to FDA.

(A) If other data or information available to FDA demonstrate that a manufacturer or supplier specified in the FCN has ceased producing, supplying, or using a food contact substance for the intended use in the United States, FDA will inform the affected manufacturer or supplier in writing. FDA will include a specified time period by which the manufacturer or supplier must respond in writing indicating whether the manufacturer or supplier continues, or intends to continue in the future, to produce, supply, or use a food contact substance for the intended use in the United States.

(B) If the manufacturer or supplier fails, by the specified date, to respond in writing indicating that the manufacturer or supplier continues, or intends to continue in the future, to produce, supply, or use a food contact substance for the intended use in the United States; or if the manufacturer or supplier confirms that it has ceased producing, supplying, or using the food contact substance for the intended food contact use in the United States, FDA may determine that the FCN is no longer effective.

(3) The intended use of the food contact substance identified in the FCN is authorized by a food additive regulation.

(i) FDA will inform the manufacturer or supplier specified in the FCN in writing that the intended use of the food contact substance identified in the FCN is authorized by a food additive regulation. FDA will include a specified time period by which the manufacturer or supplier must respond to FDA with data or other information about whether the food contact substance and its intended use meet the identity limitations and specifications authorized by the cited food additive regulation.

(ii) If a manufacturer or supplier fails, by the specified date, to supply data or other information that demonstrates that the intended use of the food contact substance identified in the FCN is not authorized by a food additive regulation, FDA may determine that the FCN is no longer effective on the basis that the intended use of the food contact substance is authorized under a food additive regulation.

(4) The intended use of the food contact substance identified in the FCN is the subject of an issued threshold of regulation exemption.

(i) FDA will inform the manufacturer or supplier specified in the authorizing FCN in writing that the intended use of the food contact substance identified in the FCN is the subject of an issued threshold of regulation exemption. FDA will include a specified time period by which the manufacturer or supplier

must respond to FDA with data or other information about whether the food contact substance and its intended use meet the identity limitations and specifications listed in the cited threshold of regulation exemption.

(ii) If a manufacturer or supplier fails, by the specified date, to supply data or other information that demonstrates that the intended use of the food contact substance identified in the FCN is not exempt through an issued threshold of regulation exemption, FDA may determine that the FCN is no longer effective on the basis that the intended use of the food contact substance is the subject of an issued threshold of regulation exemption.

(b) If FDA determines that an FCN is no longer effective, FDA will publish a notice of its determination in the **Federal Register**, stating that a detailed summary of the basis for FDA's determination that the FCN is no longer effective has been placed on public display and that copies are available upon request. If FDA determines it would be protective of public health, FDA may include a separate compliance date for the use of the food contact substance in food contact articles, including food contact substances that were produced, supplied, or used by the manufacturer or supplier before publication of the notice in the **Federal Register** or before the compliance date described in paragraph (a)(2)(i)(B) of this section. The date that the notice publishes in the **Federal Register** is the date on which the notification is no longer effective. FDA's determination that an FCN is no longer effective is final Agency action subject to judicial review.

(c) FDA's determination that an FCN is no longer effective does not preclude any manufacturer or supplier from submitting a new FCN for the same food contact substance, including for the same intended use, after FDA has determined that an FCN is no longer effective, unless the intended use of the food contact substance is authorized by a food additive regulation or the subject of an issued threshold of regulation exemption. The new submission must be made under §§ 170.100 and 170.101.

Dated: March 12, 2024.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2024–05802 Filed 3–21–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9984]

RIN 1545–BN59

De Minimis Error Safe Harbor Exceptions to Penalties for Failure To File Correct Information Returns or Furnish Correct Payee Statements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; correcting amendments.

SUMMARY: This document includes corrections to the final regulations (Treasury Decision 9984) published in the **Federal Register** on Tuesday, December 19, 2023. Treasury Decision 9984 contained final regulations implementing statutory safe harbor rules that protect persons required to file information returns or to furnish payee statements from penalties under the Internal Revenue Code for failure to file correct information returns or furnish correct payee statements.

DATES: These corrections are effective on March 22, 2024 and applicable beginning December 19, 2023.

FOR FURTHER INFORMATION CONTACT: Alexander Wu at (202) 317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This document corrects minor technical errors in 26 CFR 301.6721–0.

Background

The final regulations (TD 9984) subject to this correction are issued under section 6045(g), 6721, 6722, and 6724 of the Internal Revenue Code.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Corrections to the Regulations

Accordingly, 26 CFR part 301 is corrected by making the following correcting amendments:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 2.** Section 301.6721–0 is amended by revising the entries for 301.6721–1(b)(6) and 301.6724–1(o) to read as follows:

§ 301.6721–0 Table of Contents.

* * * * *

§ 301.6721–1 Failure to file correct information returns.

* * * * *

(b) * * *

(6) Application to returns not due on January 31, February 28, or March 15.

* * * * *

§ 301.6724–1 Reasonable cause.

* * * * *

(o) Applicability dates.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–05744 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9984]

RIN 1545–BN59

De Minimis Error Safe Harbor Exceptions to Penalties for Failure To File Correct Information Returns or Furnish Correct Payee Statements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations (Treasury Decision 9984) published in the **Federal Register** on Tuesday, December 19, 2023. Treasury Decision 9984 contains final regulations implementing statutory safe harbor rules that protect persons required to file information returns or to furnish payee statements from penalties under the Internal Revenue Code for failure to file correct information returns or furnish correct payee statements.

DATES: This correction is effective on March 22, 2024 and applicable beginning December 19, 2023.

FOR FURTHER INFORMATION CONTACT: Alexander Wu at (202) 317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9984) subject to this correction are issued under section 6045(g), 6721, 6722, and 6724 of the Internal Revenue Code.

On January 30, 2024, the Office of the Federal Register published a rule to correct an error that appeared in the most recent annual revision of the Code of Federal Regulations (89 FR 5768). The CFR correction amended § 301.6721–1 of Title 26 of the Code of Federal Regulations, Parts 300 to 499, revised as of April 1, 2023, by reinstating paragraph (b)(6), which was mistakenly omitted.

Correction to Publication

■ Accordingly, in FR Doc. 2023–27283 (TD 9984) beginning on page 87696 in the **Federal Register** of Tuesday, December 19, 2023, the following correction is made:

§ 301.6721–1 [Corrected]

■ 1. On page 87701, in the first column, amendatory instruction Par. 5, sub-instruction 4, ''Adding paragraph (b)(6);'' is corrected to read ''Revising paragraph (b)(6);''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–05639 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Military Ocean Terminal Concord, California; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its regulations to modify an existing permanent restricted area within waters along the shoreline of the Military Ocean Terminal Concord (MOTCO), on the south shore of Suisun Bay, north of the City of Concord, Contra Costa County, California. The amendment was requested by U.S. Army Military Surface Deployment and Distribution Command (SDDC) to expand the boundaries of the MOTCO restricted area in order to provide an adequate security buffer for MOTCO shoreline infrastructure and operational needs.

DATES: *Effective date:* April 22, 2024.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David Olson), 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922.

SUPPLEMENTARY INFORMATION: In response to this request by the SDDC, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is amending paragraph (a) of 33 CFR 334.1110 to expand the boundaries of the existing MOTCO restricted area. The existing boundary at the western terminus is shifted approximately 700 yards west along the shoreline so that it encompasses the mouth of Hastings Slough and eliminates a potential route of unauthorized encroachment into the MOTCO installation. Along the central and eastern parts of the restricted area, the existing boundary is shifted bayward to the edge of an existing navigation channel (Roe Island Channel, Port Chicago Reach, and Middle Ground West Reach). The revised eastern boundary follows the southern edge of the navigation channel, and will not encroach into or impact vessel traffic in the navigation channel. The eastern shoreline terminus remains at its original location.

The proposed rule to expand the existing MOTCO restricted area was published in the January 11, 2023, edition of the **Federal Register** (88 FR 1532) and the *regulations.gov* docket number was COE–2022–0012. No comments were received in response to the proposed rule. The January 11, 2023, proposed rule included coordinates of reference points A through G along the revised boundary. Minor adjustments to the coordinates of boundary points D and E have been made in this final rule to locate the points just outside the boundaries of the adjacent navigation channel, and ensure that the restricted area does not encroach on the navigation channel. Additional formatting changes were made to the coordinates of other points to ensure data consistency. All coordinates are now shown in decimal degrees to four decimal places, which did not alter the locations of the points that were not changed by this final rule.

Procedural Requirements

a. *Regulatory Planning and Review.* This final rule is not a ''significant regulatory action'' under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011) and it was not submitted to the Office of Management and Budget for review.

b. *Review Under the Regulatory Flexibility Act.* This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The Corps expects that the changes to the boundaries of this restricted area will have no appreciable economic impact on the public, will result in no anticipated navigational hazards, and will not interfere with existing waterway traffic. Small entities can still utilize navigable waters outside of the restricted area. The Corps therefore certifies that this final rule would have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* The Corps has determined that this rule will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared for the final rule and may be reviewed by contacting the Corps' San Francisco District office at *CESPN-RG-Info@usace.army.mil.*

d. *Unfunded Mandates Act.* The final rule does not impose an enforceable duty among the private sector and, therefore, is not a federal private sector mandate, and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). The Corps has also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

e. *Congressional Review Act.* The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal**

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

List of Subjects in 33 CFR Part 334

Classified information, Marine safety, Navigation (water), Security measures, Transportation, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Amend § 334.1110 by revising paragraph (a) to read as follows:

§ 334.1110 Military Ocean Terminal Concord; restricted area.

(a) *The area.* (1) Beginning at point A on the shore west of the mouth of a small slough (known as Hastings Slough) and passing east of buoy R ''6'' bearing 60°30′ for 2,860 yards, through Point B on the eastern end of the two Seal Islands, to point C on the southern edge of the Roe Island Channel near buoy R ''16A''; thence in a generally easterly direction running along the southern edge of the Roe Island Channel, Port Chicago Reach and Middle Ground West Reach (points D and E) to point F directly north of the eastern shore boundary (point G); thence 180° to point G on the shore line; thence following the high water shore line in a general westerly direction to the point of beginning. The coordinates for the points in paragraph (a)(1) of this section are provided in Table 1.

TABLE 1 TO PARAGRAPH (a)(1)

	Latitude	Longitude
Point A (shoreline)	38.0513	−122.0576
Point B	38.0579	−122.0430
Point C	38.0630	−122.0307
Point D	38.0611	−122.0205
Point E	38.0593	−122.0010
Point F	38.0594	−121.9882
Point G (shoreline)	38.0521	−121.9882

(2) The datum for these coordinates is NAD–83.

* * * * *

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2024–05890 Filed 3–21–24; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF TRANSPORTATION

Great Lakes St. Lawrence Seaway Development Corporation

33 CFR Part 402

RIN 2135–AA56

Tariff of Tolls

AGENCY: Great Lakes St. Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC. The GLS is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2024 navigation season, which are effective only in Canada.

DATES: This rule is effective on March 22, 2024.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *https://www.Regulations.gov;* or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Great Lakes St. Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; (315) 764–3200.

SUPPLEMENTARY INFORMATION: The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC. The GLS is revising 33 CFR 402.12, ''Schedule of tolls'', to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2024 navigation season.

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *https://www.Regulations.gov.*

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore, Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major Federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of

1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Great Lakes St. Lawrence Seaway Development Corporation is amending 33 CFR part 402 as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4), and 988, as amended; 49 CFR 1.101.

■ 2. Revise § 402.12 to read as follows:

§ 402.12 Schedule of tolls.

TABLE 1 TO § 402.12

Column 1		Column 2	Column 3
Item	Description of charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
	(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time: [1]		
	(a) all vessels excluding passenger vessels	0.1267	0.2027.
	(b) passenger vessels	0.3801	0.6080.
	(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
	(*a*) bulk cargo	1.3133	0.8964.
	(*b*) general cargo	3.1645	1.4347.
	(*c*) steel slab	2.8641	1.0271.
	(*d*) containerized cargo	1.3133	0.8964.
	(*e*) government aid cargo	n/a	n/a.
	(*f*) grain	0.8069	0.8964.
	(*g*) coal	0.8069	0.8964.
	(3) a charge per passenger per lock	0.0000	0.0000.
	(4) a lockage charge per Gross Registered Ton of the vessel, as defined in item 1(1), applicable whether the ship is wholly or partially laden, or is in ballast, for transit of the Welland Canal in either direction by cargo ships.	n/a	0.3377.
	Up to a maximum charge per vessel	n/a	4,724.00.
2	Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).	13 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).
3	Minimum charge per vessel per lock transited for full or partial transit of the Seaway.	32.78 [2]	32.78.
4	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [3].	25.00 [4]	25.00.
5	Under the New Business Initiative Program, for cargo accepted as New Business, a percentage rebate on the applicable cargo charges for the approved period.	20%	20%.
6	Under the Volume Rebate Incentive program, a retroactive percentage rebate on cargo tolls on the incremental volume calculated based on the pre-approved maximum volume.	10%	10%.
7	Under the New Service Incentive Program, for New Business cargo moving under an approved new service, an additional percentage refund on applicable cargo tolls above the New Business rebate.	20%	20%.

[1] Or under the US GRT for vessels prescribed prior to 2002.

[2] The applicable charged under item 3 at the Great Lakes St. Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)). The other charges are in Canadian dollars and are for the Canadian share of tolls.

[3] Includes a $5.00 discount per lock with use of online reservation and payment system for Canadian locks.

[4] The applicable charge at the Great Lakes St. Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 USD or $30 CAD per lock.

Issued at Washington, DC, under authority delegated at 49 CFR part 1.101. Great Lakes St. Lawrence Seaway Development Corporation.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2024–06084 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2023–0054]

RIN 0651–AD73

Signature Requirements Related to Acceptance of Electronic Signatures for Patent Correspondence

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is revising the rules of practice in patent cases to update the signature rule to provide for the broader permissibility of electronic signatures using third-party document-signing software, such as DocuSign® and Acrobat® Sign, and more closely align signature requirements with the rules of practice in trademark cases. The revised rules will provide additional flexibility and convenience to patent applicants and owners, practitioners, and other parties who sign patent-related correspondence, and promote consistency by establishing signature requirements which are common to both patent and trademark matters.

DATES: This final rule is effective on March 22, 2024.

FOR FURTHER INFORMATION CONTACT: Mark Polutta, Senior Legal Advisor, at 571–272–7709; or Terry J. Dey, Legal Administrative Specialist, at 571–272–7730, both of the Office of Patent Legal Administration; or to *PatentPractice@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The regulation at 37 CFR 1.4(d) sets forth the signature requirements for patent correspondence. Section 1.4(d)(1) and (2) set forth the requirements for handwritten signatures and S-signatures, respectively. An S-signature is a signature that is inserted between forward slash marks by the signer and is not a handwritten signature. An S-signature must consist only of letters, or Arabic numerals, or both, with appropriate spaces and commas, periods, apostrophes, or hyphens for punctuation, and the signer's name must be printed or typed, preferably immediately below or adjacent to the S-signature. Section 1.4(d)(3) provides for a graphic representation of a handwritten signature or an S-signature for correspondence submitted electronically via the USPTO patent electronic filing system. The USPTO has been accepting certain electronic signatures as graphic representations pursuant to § 1.4(d)(3), if the correspondence was submitted via the USPTO patent electronic filing system. The signer must personally make their own signature, regardless of what type of signature is used.

Prior to the effective date of this final rule, the USPTO did not permit patent correspondence to be electronically signed by methods other than the electronic entry of S-signatures under § 1.4(d)(2) and the graphic representation method of § 1.4(d)(3). Furthermore, it only permitted the graphic representation method of § 1.4(d)(3) if the correspondence was being submitted via the USPTO patent electronic filing system. In recent years, however, other methods of electronic signature, such as methods using third-party software, have become more prevalent, reliable, and secure. For example, some software platforms include document-signing features with digital certificates or authenticity trails for the electronic signatures, resulting in the increased reliability and security of electronically generated signatures.

To simplify and streamline the USPTO's processes for patent applicants and owners, practitioners, and other parties who sign patent-related correspondence and to more closely align the signature requirements for patent and trademark correspondence, the USPTO is adding § 1.4(d)(4) as a new rule to provide an additional option for electronic signatures in patent correspondence. In addition, this new rule is aimed at addressing stakeholder input received, including during multilateral forums such as IP5 and Trilateral, and is directed towards increasing harmonization of practices and procedures amongst intellectual property offices globally. More information about the IP5 and Trilateral forums is available at *www.uspto.gov/ip-policy/patent-policy/ip5* and *www.uspto.gov/ip-policy/patent-policy/patent-trilateral-activities.*

Under this new rule, ''the person named as the signer'' may sign patent correspondence electronically using any form of electronic signature specified by the Director. Moreover, the electronic signature under newly added § 1.4(d)(4) may be used whether the correspondence is being submitted via the USPTO patent electronic filing system, mailed, faxed, or hand delivered. At this time, the electronic signatures specified by the Director in newly added § 1.4(d)(4) consist of electronic signatures generated via third-party document-signing software that meet the requirements outlined in section II of this preamble. Signatures created using other types of software, such as graphic editing software, are not acceptable under newly added § 1.4(d)(4).

II. Requirements for Additional Electronic Signatures

Subsection II(A) provides the requirements for third-party document-signing software, and subsection II(B) provides the USPTO procedures for determining whether electronically signed patent correspondence complies with newly added § 1.4(d)(4). Taken together, the subsections set out when patent correspondence signed using third-party document-signing software may be accepted under newly added § 1.4(d)(4). The final rule does not change any other requirements for signatures on patent correspondence, including that a signature must be personally inserted or generated by the named signer. Another person may not use document-signing software to create or generate the electronic signature of the named signer. The final rule also does not change which USPTO personnel have the responsibility for reviewing signatures on patent correspondence. This final rule is effective on publication and supersedes any previous USPTO guidance on this topic to the extent there are any conflicts.

A. Requirements for Third-Party Document-Signing Software

Parties using third-party document-signing software must ensure that the underlying software meets the following requirements:

(1) The software must be specifically designed to generate an electronic signature and preserve signature data for later inspection in the form of a digital certificate, token, or audit trail. USPTO personnel may presume that the document-signing software preserves signature data for later inspection in the required form, unless the Office of the Deputy Commissioner for Patents (Legal) notifies USPTO personnel otherwise.

(2) The software must result in the signature page or electronic submission form bearing an indication that the page or form was generated or electronically signed using document-signing software.

The USPTO recommends that the software generate the date on which the signature was applied. While providing a date is not generally required in patent matters, the date is required for electronic signatures signed using document-signing software in trademark matters before the USPTO. Using software that generates the date will benefit practitioners that work in both patent and trademark matters, as the signatures will be acceptable in both patents and trademarks at the USPTO. Regardless of the date the correspondence was signed, the date of receipt will be based on §§ 1.6 through 1.10.

B. USPTO Procedures

When reviewing a signature on a document that was generated using document-signing software, USPTO personnel must first determine compliance with other signature requirements, such as whether it was signed by a proper person (*e.g.,* § 1.33(b)). The Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 07.2022, February 2023) provides more information on signatures by proper parties at section 714.01. Submissions must be personally signed by the individual identified in the signer name field. A person may not use document-signing software to enter or electronically generate someone else's signature. See newly added § 1.4(d)(4), redesignated § 1.4(d)(5)(ii), and MPEP 502.02. The electronic signatures of newly added § 1.4(d)(4) do not require the forward slashes of § 1.4(d)(2).

USPTO personnel must ensure that the signature block for a signature under newly added § 1.4(d)(4) meets the following requirements:

(1) Name. The name of each person who signed the document must be presented in printed or typed form, preferably immediately below or adjacent to the signer's adopted signature. The signer's name must be reasonably specific enough so that the identity of the signer can be readily recognized.

(2) Practitioner registration number. The registration number of each patent practitioner (§ 1.32(a)(1)) who signed the document pursuant to § 1.33(b)(1) or (2), must be supplied, either as part of the signature or immediately below or adjacent to the signature. The design patent practitioner status of each design patent practitioner must be indicated by placing the word ''design'' (in any format) adjacent to the signature.

(3) Acceptable software type. The software used by the signer must meet the requirements for third-party document-signing software listed in Section II(A).

If the submission is signed by a proper party and all the elements listed above are satisfied, USPTO personnel may presume the signature meets the requirements of newly added § 1.4(d)(4) for an acceptable electronic signature, unless directed otherwise by the Office of the Deputy Commissioner for Patents (Legal). If one or more of these requirements are not met, the signature block is noncompliant.

Notwithstanding the provisions above, USPTO personnel retain the discretion to inquire about the acceptability of a signature on a submission or require ratification, confirmation, or evidence of authenticity of such signature, where the USPTO has reasonable doubt as to the authenticity (veracity) of the signature.

The MPEP will be updated in due course to incorporate these requirements.

Discussion of Specific Rules

The following is a discussion of the amendments to 37 CFR part 1.

Section 1.4: The introductory text of § 1.4(d)(1) is revised to provide to a reference to redesignated § 1.4(d)(5) and delete a reference to § 1.4(e), which was reserved in a prior rulemaking.

New § 1.4(d)(4) provides an additional option for electronic signatures in patent correspondence. The electronic signatures of newly added § 1.4(d)(4) must be of a form specified by the Director and personally entered by the person named as the signer on the correspondence being filed for a patent application, patent or other patent proceeding in the USPTO. Newly added § 1.4(d)(4)(i) requires a patent practitioner (§ 1.32(a)(1)), signing pursuant to § 1.33(b)(1) or (2), to supply their registration number either as part of the electronic signature or immediately below or adjacent to the electronic signature. Newly added § 1.4(d)(4)(i) also requires a design patent practitioner to additionally indicate their design patent practitioner status by placing the word ''design'' (in any format) adjacent to the electronic signature. Newly added § 1.4(d)(4)(ii)(A) requires the signer's name to be presented in printed or typed form, preferably immediately below or adjacent to the electronic signature. Newly added § 1.4(d)(4)(ii)(B) requires the signer's name to be reasonably specific enough so that the identity of the signer can be readily recognized.

The provisions pertaining to certifications of prior § 1.4(d)(4) have been redesignated as § 1.4(d)(5). Redesignated § 1.4(d)(5)(ii) has been revised to include references to newly added § 1.4(d)(4) and gender specificity has been removed.

The provisions pertaining to forms of prior § 1.4(d)(5) have been redesignated as § 1.4(d)(6).

Rulemaking Considerations

A. Administrative Procedure Act: The changes proposed by this rulemaking involve rules of agency practice and procedure, and/or interpretive rules, and do not require notice-and-comment rulemaking. See *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 97, 101 (2015) (explaining that interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'' and do not require notice and comment when issued or amended); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice''); and *JEM Broadcasting Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (explaining that rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits'').

In addition, the Office finds good cause pursuant to authority at 5 U.S.C. 553(b)(B), to adopt the change to § 1.4 without prior notice and an opportunity for public comment, as such procedures would be unnecessary and contrary to the public interest. This final rule provides another means for patent applicants and owners, practitioners, and other parties who sign patent-related correspondence to provide a signature. It merely involves rules of agency procedure or practice within the meaning of 5 U.S.C. 553(b)(A) and is a non-substantive change to the regulations. Accordingly, this final rule is adopted without prior notice and opportunity for public comment. Furthermore, the Office finds good cause to waive the 30-day delay in effectiveness period, as provided by 5 U.S.C. 553(d)(3), because this final rule would promote harmonization of signature requirements to reduce confusion and increase convenience for impacted parties as set forth here.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public

comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. See 5 U.S.C. 605(b).

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by E.O. 14094 (April 6, 2023).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (January 18, 2011). Specifically, and as discussed above, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking pertains strictly to federal agency procedures and does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a Tribal Summary Impact Statement is not required under Executive Order 13175 (November 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (April 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking does not involve any new information collection requirements, or impact any existing information collection requirements, that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the USPTO amends 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Amend § 1.4 by:
■ a. Revising paragraph (d)(1) introductory text;
■ b. Redesignating paragraphs (d)(4) and (5) as paragraphs (d)(5) and (6);
■ c. Adding new paragraph (d)(4);
■ d. Revising newly redesignated paragraph (d)(5)(ii); and
■ e. Removing the parenthetical authority citation at the end of the section.

The revisions and addition read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d)(1) *Handwritten signature.* A design patent practitioner must indicate their design patent practitioner status by placing the word ''design'' (in any format) adjacent to their handwritten signature. Each piece of correspondence, except as provided in paragraphs (d)(2) through (5) and (f) of this section, filed in an application, patent file, or other proceeding in the Office that requires a person's signature, must:

* * * * *

(4) *Additional electronic signatures.* Correspondence being filed in the USPTO for a patent application, patent, or other patent proceeding at the USPTO which requires a signature may be signed using an electronic signature that is personally entered by the person named as the signer and of a form specified by the Director.

(i) A patent practitioner (§ 1.32(a)(1)), signing pursuant to § 1.33(b)(1) or (2), must supply their registration number either as part of the electronic signature or immediately below or adjacent to the electronic signature. A design patent practitioner must additionally indicate their design patent practitioner status by placing the word ''design'' (in any format) adjacent to the electronic signature.

(ii) The signer's name must be:

(A) Presented in printed or typed form preferably immediately below or adjacent to the electronic signature; and

(B) Reasonably specific enough so that the identity of the signer can be readily recognized.

(5) * * *

(ii) *Certification as to the signature.* The person inserting a signature under paragraph (d)(2), (3), or (4) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is the person's own signature. A person submitting a document signed by another under paragraph (d)(2), (3), or (4) is obligated to have a reasonable basis to believe that the person whose signature is present on the document was actually inserted by that person, and should retain evidence of authenticity of the signature. Violations of the certification as to the signature of another or a person's own signature as set forth in this paragraph (d)(5)(ii) may result in the imposition of sanctions under § 11.18(c) and (d) of this chapter.

* * * * *

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–06126 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–3, and 51–5

RIN 3037–AA14

Supporting Competition in the AbilityOne Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), operating as the U.S. AbilityOne Commission (Commission), is publishing a final rule that clarifies the Commission's authority to consider different pricing methodologies to establish the initial Fair Market Price (FMP) for Procurement List (PL) additions and changes to the FMP. The final rule also permits the central nonprofit agency (CNA) to distribute certain high-dollar services orders on a competitive basis to the authorized nonprofit agency (NPA) after considering price and non-price factors. Lastly, the final rule further clarifies the Commission's authority to authorize and deauthorize NPAs as mandatory sources and require all NPAs to provide the right of first refusal of employment to the current employees of an incumbent NPA who are blind or have other significant disabilities for positions for which they are qualified.

DATES: This final rule is effective April 22, 2024.

FOR FURTHER INFORMATION CONTACT: Cassandra Assefa, Regulatory and Policy Attorney, Office of General Counsel, U.S. AbilityOne Commission, 355 E Street SW, Suite 325, Washington, DC 20024; telephone: (202) 430–9886; email: *cassefa@abilityone.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Javits-Wagner-O'Day (JWOD) Act and the Commission

The JWOD Act, 41 U.S.C. 8501, *et seq.,* leverages the purchasing power of the Federal Government to create employment opportunities through the AbilityOne Program for individuals who are blind or have significant disabilities. The Program is administered by the 15-member, presidentially appointed Commission that, as an independent Federal agency, maintains a PL of products and services that Federal agencies must purchase from participating NPAs who employ individuals who are blind or have significant disabilities. *See* 41 U.S.C.8503 and 8504. CNAs are responsible for distributing orders to Commission-approved NPAs to provide products and services to Federal agencies. *See* 41 CFR parts 51–2.4(a)(3) & 51–3.4. NPAs must meet initial qualification requirements and maintain those qualifications throughout their participation in the AbilityOne Program. *See* 41 CFR parts 51–4.2 and 51–4.3.

The Commission has five roles stated in the JWOD Act. First, the Commission decides on the addition or removal of products and services on the PL. *See* 41 U.S.C. 8503(a). Second, the Commission sets the FMP that the Federal Government will pay for the products or services. *See* 41 U.S.C. 8503(b). Third, the Commission designates nonprofit agencies to serve as CNAs, who are responsible for ''facilitating the distribution of orders'' for products or services among participating NPAs. *See* 41 U.S.C. 8503(c). Fourth, the Commission promulgates regulations ''on other matters as necessary'' to carry out the JWOD Act. *See* 41 U.S.C. 8503(d)(1). Fifth, the Commission engages in a ''continuing study and evaluation of its activities'' to ensure effective administration of the JWOD Act. *See* 41 U.S.C. 8503(e).

At present, pursuant to the JWOD Act, the Commission has designated National Industries for the Blind (NIB) and SourceAmerica as the CNAs responsible for distributing orders to participating NPAs. *See* 41 CFR 51–1.3 (definition of CNA); *see* also 41 CFR 51–3.2 (describing duties of a CNA). The CNAs provide information to the Commission as needed and otherwise assist the Commission in implementing the Commission's regulations. NPAs associated with NIB primarily employ individuals who are blind or visually impaired; NPAs associated with SourceAmerica primarily employ individuals with other significant disabilities, including intellectual and developmental disabilities (IDD). As of September 30, 2023, NIB represents 58 NPAs participating in the AbilityOne Program, and SourceAmerica represents 355 NPAs.

In making its determination on whether to add a product or service to the PL, the Commission assesses four suitability criteria. *See* 41 CFR 51–2.4. First, the Commission considers whether there is the potential for the NPA to employ enough individuals who are blind or have significant disabilities as needed to carry out the contract.

Second, the Commission determines whether the recommended NPAs meet all the qualification requirements set forth in 41 CFR part 51–4. Third, the Commission assesses the capability of the recommended NPAs to provide the product or service, including the required labor operations, Government quality standards, and delivery schedules. Finally, if there is a current contractor providing the product or service, the Commission determines if there would be an adverse impact on that contractor if the proposed requirement is placed on the PL.

B. The Need for Rulemaking

The 898 Panel

Section 898(a)(1) of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 [Hereinafter referred to as the Act] [1] directed the Secretary of Defense to establish a panel of senior level representatives from the Department of Defense (DoD) agencies, the Commission, and other Federal Government agencies to address the effectiveness and internal controls of the AbilityOne Program related to DoD contracts [Hereafter referred to as the Panel]. The Panel consisted of representatives from the Office of the Secretary of Defense and its DoD Inspector General, the Commission, and the Commission's Inspector General, as statutory members. The Panel's membership also consisted of senior leaders and representatives from the military service branches, Department of Justice, Department of Veterans Affairs, Department of Labor, the General Services Administration, the Department of Education, and the Defense Acquisition University.

The primary mission of the Panel was to identify both vulnerabilities and opportunities in DoD contracting within the AbilityOne Program and, at a minimum, recommend improvements in the oversight, accountability, and integrity of the Program. Of specific relevance to this rulemaking, the Panel was directed to make recommendations for increasing employment opportunities for individuals who are blind or have significant disabilities, especially service-disabled veterans, and recommend ways to explore opportunities for competition among qualified NPAs to ensure equitable selection in work allocations. The Panel was required to provide an annual report to Congress on its activities not later than September 30, 2017, and annually thereafter for the next three years.[2]

The first annual report from the Panel was submitted to Congress in July 2018 and its final report was submitted in January 2022. During its four-year tenure, the Panel established seven subcommittees that aligned with the duties described in Section 898(c), with the Acquisition and Procurement subcommittee, also known as Subcommittee Six, addressing the acquisition and procurement duties. Subcommittee Six identified ten findings that led to initial recommended actions for implementation.

The most germane finding from Subcommittee Six called on the Commission to implement price-inclusive NPA selection procedures and conduct pilot tests that include DoD and Commission-led evaluations and recommendations.

Although the Panel's recommendations were not binding on the Commission, subsection (f)(2) of the Act directed the Commission to make a good faith effort to implement its recommendations.[3] If the Commission unduly delayed or ignored the Panel's recommendations, the Secretary of Defense was given the authority to ''suspend compliance with the requirement to procure a product or service in Section 8504 of title 41, United States Code.'' [4] Currently, DoD procurements represent more than half of the Program's annual sales, which creates procurement opportunities that employ over 18,275 individuals with significant disabilities or who are blind.[5] If the DoD were to withdraw from the Program, or even reduce participation, the results would greatly harm the objectives of the Commission.

Pilot Tests at Fort Bliss and Fort Meade

In October 2018, the Commission partnered with officials from the Army's Mission Installation Contracting Command (MICC) and Installation Management Command (IMCOM) to work on a competitive NPA selection process incorporating the key aspects of recommendations from Subcommittee Six.[6] The parties selected the Facility Support and Operations Service (FSOS) contract at Fort Bliss, TX, for the first pilot and selected a second pilot, for similar services, at Fort Meade, MD, the following year. At the time, the Fort Bliss FSOS contract, valued at over $300 million in total contract value, was the highest dollar value contract in the AbilityOne Program.[7] The Fort Meade requirement had a total contract value of approximately $98 million.

The Commission had three objectives for conducting both pilots: first, to test a way to include price as a factor in the NPA selection process; second, to determine how to integrate personnel and resources from the requesting Federal agency into the NPA evaluation process; and third, to explore ways to compete, and potentially authorize a different NPA to perform on an existing PL requirement.[8] Both pilots were instructive in providing positive insights to the subcommittee and the Commission as to the last two questions. But the pilot at Fort Meade provided another equally valid insight to the first question, when the Commission was enjoined from completing the competitive pilot at Fort Meade due to a successful challenge at the Court of Federal Claims (COFC).[9]

The petitioner raised several arguments against the permissibility of conducting the Fort Meade pilot, but the

[1] National Defense Authorization Act for Fiscal Year 2017, Public Law 114–328, sec. 898(a)(1) (2016).

[2] Each report can be found at *https://www.acq.osd.mil/asda/dpc/cp/policy/abilityone.html.*

[3] *Supra* note 1. Since the Panel sunset when it submitted its final report to Congress in accordance with (IAW) part (j) of the Act, it is debatable as to whether the Secretary of Defense continues to retain the authority to invoke the authority described at (f)(2). However, in the fourth and final report to Congress the Panel identified numerous recommendations that remained incomplete, such as the recommendation related to competition (Recommendations 10 & 11).

[4] *Supra* note 1 at (g)(1)(A).

[5] Employment numbers are based on estimates from SourceAmerica (15,600) and the National Industries for the Blind (2,675) at the close of fiscal year 2023. These numbers include employees working under service and product contracts.

[6] The MICC is a subordinate Command of the Army Contracting Command (ACC) and is responsible for the procurement of products and services for thirty-two Army Installations located throughout the Continental United States. IMCOM is a subordinate Command of the U.S. Army Materiel Command and is responsible for the day-to-day management of Army Installations around the globe. Currently, at least 18,000 AbilityOne workers support DoD contracts and a vast majority of work on contracts administered by the MICC for IMCOM installations.

[7] Report on the 2018–2019 Competition Pilot Test for AbilityOne Program Nonprofit Agencies Facility Support and Operations Services Contract Fort Bliss, Texas. AbilityOne Commission Report on Competition Pilot Test at Fort Bliss, Texas 2018–2019

[8] ''Social impact'' was a term of art that was prevalent at the time, but the first attempt to operationalize that component was in the context of the Fort Knox pilot described below.

[9] *Melwood Horticultural Training Center, Inc.* v. *United States,* 153 Fed. Cl. 723, 737 (2021). The AbilityOne Commission decided to implement, through an interim policy, a pilot program to use competitive procedures for a base support contract at Fort Meade. The pilot program included price as part of the competition selection criteria. Melwood challenged the Commission's ability to undertake a pilot without having previously gone through the rulemaking process. The court ultimately enjoined the Commission from implementing this type of change to the procurement process through an interim policy.

COFC focused on a narrow provision at 41 CFR part 51.2–7(a) of the regulatory language that signaled a preference for bilateral negotiations. The same regulation permitted use of other pricing methodologies, but COFC opined that other pricing methodologies could only be used ''if agreed to by the negotiating parties.'' The COFC further reasoned that the negotiating parties were limited to the NPA, the contracting activity, and the central nonprofit agency. As a result of this reading, the COFC found that the price component at issue in that case conflicted with the ''collaborative pricing process'' contemplated under 41 CFR part 51–2.7. The Commission posits that such an interpretation is not consistent with the Commission's statutory authority to establish the FMP, or the general thrust of the regulation. The JWOD Act unambiguously authorizes the Commission, not the negotiating parties, to establish the FMP and to revise it ''in accordance with changing market conditions.'' [10]

The proposed changes to § 51–2.7 are intended to harmonize the statute and regulation to eliminate any ambiguity surrounding the Commission's authority to establish the FMP, by making it clear that it is not limited to an agreement between the parties when the Commission utilizes other pricing methodologies to establish or change the FMP.[11] In the Fourth Panel Report to Congress, the Commission Chairperson acknowledged the regulatory impasse created by the COFC decision, but explained that the Commission would be taking steps ''to strengthen its authority in this area.'' [12] This rulemaking is an effort to carry out that pledge.

Despite some setbacks, the Commission was encouraged by the results of the pilots because each test demonstrated that including price as a factor, coupled with a ''customer focused'' NPA selection ethos, can provide promising results for the Federal customer and the Program. However, the Commission was also mindful of the COFC decision and the need to ensure that competition within the Program does not frustrate other modernization initiatives and the Commission's ability to encourage employment growth for employees who have significant disabilities and who are blind.[13]

The Commission's Five-Year Strategic Plan

The Notice of Proposed Rule Making (NPRM) explained how this rulemaking was also heavily informed by the Commission's Strategic Plan for Fiscal Year (FY) 2022–2026, issued in June 2022.[14] The Strategic Plan, a policy road map for next five years, is anchored by four Strategic Objectives:

(1) Expand competitive integrated employment (CIE) for people who are blind or have other significant disabilities.

(2) Identify, publicize, and support the increase of good jobs and optimal jobs in the AbilityOne Program.[15]

(3) Ensure effective governance across the AbilityOne Program.

(4) Partner with Federal agencies and AbilityOne stakeholders to increase and improve CIE opportunities for individuals who are blind or have other significant disabilities.

These four objectives represent a deliberate shift to align the Program with contemporary disability policy and modern business practices.[16] The Commission realizes that some reforms will require specific legislative actions to fully implement, such as potential changes to the seventy-five percent direct labor hour ratio requirement. *See* 41 U.S.C. 8501(6)(C) & (7)(C). Other reforms, however, can be made by updating existing regulations and policies. For example, in November 2023, the Commission finalized Commission Policy 51.400, which introduced the long-term objective of providing job individualizations, employee career plans, and career advancement programs.[17] The Commission has also made numerous regulatory changes throughout its history, the most recent being the elimination of 14(c) certificates within the Program in 2022.[18]

Other Reasons for This Rulemaking

Although Section 898 authorizes the Secretary of Defense to suspend compliance with the Program if the Commission does not substantially implement the Panel recommendations, that isn't the only risk the Program faces.[19] Even if the DoD does not withdraw from the Program, it has other alternatives even for existing AbilityOne requirements. Increased competition can help to serve as a countermeasure to better protect existing PL work from other procurement actions or insourcing.[20] According to a 2018 Government Accountability Office (GAO) study, the DoD ''budgets about $25 billion annually to operate its installations,'' but it has been under pressure since 1997 to ''reduce its installation support cost.'' [21] The GAO further noted that the ''DoD needed to show measurable and sustained progress in reducing installation support costs and achieving efficiencies in installation support.'' [22] In 2013, Congress provided military services the authority to enter into Intergovernmental Support Agreements (IGSAs) with local and state governments to receive and provide or share installation support services.[23] The Army, with a current portfolio of approximately 122 IGSAs, routinely uses IGSAs as a procurement tool to

[10] 41 U.S.C. 8503(b). It should be noted that a ''collaborative pricing process'' is not contemplated under the statute. The authority to establish the FMP rests solely with the Commission.

[11] It should also be noted that the regulatory language discussed in the ruling was only added as the result of a regulatory change in 1999. The Commission posits that the purpose of that change was to signal a preference for bilateral negotiations. It was not intended to limit the Commission's authority to consider and use other pricing methodologies.

[12] *Supra* note 2 at Appendix A.

[13] The AbilityOne Program is an employment program, but the Commission does not create jobs. Jobs are created through Federal contracts performed by NPAs in the Program. Competition may or may not result in greater job growth for any individual contract, but by carrying out a primary objective of the Panel, it should help to retain existing work and make the Program a more attractive option for Federal customers.

[14] AbilityOne Strategic Plan for FY 2022–2026. *www.abilityone.gov/commission/documents/AbilityOne%20Strategic%20Plan%20FY%202022–2026%20Final.pdf.*

[15] *Id.* The Commission defines a ''good job'' in the AbilityOne Program as having four attributes: 1. Individuals with disabilities are paid competitive wages and benefits; 2. The job matches the individual's interests and skills (''job customization''); 3. Individuals with disabilities are provided with opportunities for employment advancement comparable to those provided to individuals without disabilities; and 4. Individuals are covered under employment laws. An ''optimal job'' as one that includes the four attributes of a ''good job,'' but also allows AbilityOne employees to work side-by-side with employees without disabilities doing the same or similar work.

[16] *Id.*

[17] *www.abilityone.gov/laws,_regulations_and_policy/documents/Commission%20Policy%2051.400%20AbilityOne%20Commission%20Compliance%20Program%20-%20Jan%201,%202024%20-%20signed%20-%20508.pdf.*

[18] *https://www.federalregister.gov/documents/2022/07/21/2022-15561/prohibition-on-the-payment-of-subminimum-wages-under-14c-certificates-as-a-qualification-for.*

[19] *Supra* note 1.

[20] *See* § 51–6.12(d). With 90-days' notice, a Federal agency could elect to perform work with Government employees if it determines it is more cost effective to do so (or any other reason), rather than continue contract performance with an AbilityOne NPA.

[21] *https://www.gao.gov/assets/gao-19-4.pdf.*

[22] *Id.*

[23] *See* the National Defense Authorization Act for Fiscal Year 2013, Public Law 112—239, § 331 (2013). In the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015, Public Law 113—291, § 351 (2014) (codified as amended at 10 U.S.C. 2679), Congress clarified the authority to enter into an IGSA, and transferred the provision from 10 U.S.C. 2336 to 10 U.S.C. 2679.

reduce administrative burdens and achieve greater cost savings as compared to traditional government contracting.[24] Although the DoD has placed some local policy limitations on the use of IGSAs to displace a contract in the AbilityOne Program,[25] those limitations are not absolute.[26]

For example, in 2017, the Army and the incumbent NPA were embroiled in a dispute over the price of the follow-on AbilityOne contract for installation support at Fort Polk (renamed Fort Johnson effective June 13, 2023) in Louisiana. The Army estimated the new contract price at $75 million over five years, whereas the NPA's price estimate was approximately $115 million. After eight months of unsuccessful negotiations, the Army stated they were considering the conversion of the Fort Polk requirement to an IGSA with the City of Leesville, LA. Only after direct intervention by the Deputy Assistant Secretary of the Army for Procurement (DASA(P)), were the two sides able to agree on a price.[27] A new contract was awarded on May 31, 2018, for a price of $75,984,926 over five years—thus averting the conversion to an IGSA. The Commission believes that for certain high dollar contracts it is far more advantageous for the Government to create a competitive environment where NPAs are competing against other NPAs, rather than risk the Federal customer converting an existing requirement within the Program to performance under an IGSA. Simply put, when competition leads to the addition of a new requirement to the Program or the retention of an existing requirement, it is a gain. When the lack of competition leads the DoD to move an existing requirement to an IGSA, it is a loss to the Program.

Proof of Concept: The Fort Knox Pilot

In November 2022, using prior pilots, the Commission's Strategic Plan, and the COFC decision as a roadmap, the Commission authorized the execution of a pilot at Fort Knox that supported several objectives described in the Commission's 5-year strategic plan, such as creating good and optimal jobs while providing the ''best value'' to the Federal customer.[28] To accomplish this goal, the pilot was divided into two distinct, but interdependent phases. Phase I began in mid-January of 2023 with the issuance of an Opportunity Notice (ON),[29] which fully explained the ground rules for participation. After responses were received, SourceAmerica, the responsible CNA, assessed and recommended two capable nonprofit agencies to the Commission for consideration as authorized sources. 41 CFR 51–3.2(d). Phase I ended when the Commission, after considering the suitability criteria at § 51–2.4, authorized both NPAs to compete in Phase II. The decision to authorize the NPAs was based on both NPAs meeting or exceeding the necessary management capability, experience, demonstration of employment potential through proposed placement program participation,[30] and having an effective workforce integration plan.[31]

On June 5, 2023, Phase II commenced. In Phase II, SourceAmerica was directed to select the NPA providing the best value to the Federal customer, after considering technical capability, past performance, and price. Although price was a selection factor, the Commission directed SourceAmerica to ensure that price did not have greater weight than the non-price factors in the final NPA selection decision.[32] For the evaluation, the Army provided technical expertise to assist with all evaluation factors, and SourceAmerica made its selection on October 19, 2023. After the NPA selection, the Commission received the pricing information and a recommendation from SourceAmerica for the FMP. In early November, the Commission established the FMP, principally relying on the results of the Phase II price competition to support its determination.[33]

The execution and results of this test pilot illustrate one of several potential approaches to address the Panel objectives. The NPA selected for the Total Facilities Maintenance (TFM) contract will create nearly fifty percent more jobs for individuals who have significant disabilities than the predecessor contractor.[34] The other NPA in the competition would have created approximately the same number of jobs for individuals with significant disabilities, but at a somewhat higher cost than the selected NPA.[35]

Like the previous two pilots, Fort Knox was identified and executed after senior leader coordination and approval from the Army and the AbilityOne Commission.[36] This approach ensured excellent lines of communication and robust responsiveness from the early stages of requirement development to NPA selection and contract award. Once this rule is finalized, similar coordination, collaboration, and approval will be a critical component for implementing this rule.

C. Notice of Proposed Rulemaking (NPRM)

On March 13, 2023, the Commission issued an NPRM in the **Federal Register**.[37] The proposed rule clarified the Commission's authority to consider different pricing methodologies in establishing the FMP for PL additions and changes to the FMP; defined the parameters for conducting competitive distributions among multiple qualified

[24] *See https://www.army.mil/article/263529/historic_statewide_intergovernmental_support_agreement_signed.*

[25] Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity 2018 First Annual Report to Congress, footnote 38.

[26] *Id.*

[27] *Id* at 22–23.

[28] The contract, covering 109,054 acres and 2,326 buildings, is to provide Total Facility Maintenance (TFM) across several functional areas, such as building and structure maintenance, snow and ice removal, landscaping services, utility system maintenance, and other maintenance.

[29] The ON acts as a solicitation from the CNA to the NPA community, which describes, at a minimum, the requirements, necessary NPA qualifications, the period of performance, and any other special consideration established by the CNA or Commission.

[30] Placement Program criteria include evaluation factors related to the NPA's ability to promote upward mobility and/or placement of individuals with disabilities outside the AbilityOne Program. Such factors include but are not limited to training, qualifications of the NPA's personnel supporting placements, placement support services, and/or leveraging referral sources to support placements.

[31] Integrated Work Environment criteria include evaluation factors related to how the NPA plans to achieve and maintain an integrated work environment.

[32] 88 FR 17553 (2023).

[33] Commission Decision Document, voted and approved on May 25, 2023. The Commission approved the following actions: (1) Approval to transfer the Commission's authority to perform the Fort Knox, Kentucky, Total Facilities Maintenance (TFM) Procurement List (PL) service (Procurement List #/Project #: 2004789/121674) from SourceAmerica to a qualified, capable nonprofit agency (NPA) at a Fair Market Price (FMP). (2) Authorization of Skookum and PCSI to serve in tandem as mandatory sources. (3) Authorize the use of a multi-factor process (with a price component) for final selection of the NPA that will perform the TFM. (4) Approve an NPA project-level ratio of less than 75 percent (but greater than 40 percent) for the 5-year pilot test period. (5) Approve the use of price competition as the methodology for establishing the Fair Market Price (FMP)—to be completed in Phase II.

[34] The previous requirement earmarked 34 positions for individuals who have significant disabilities under the total facilities maintenance requirement (30 were filled at the time of the competition). The newly selected NPA is expected to fill 45 of its available positions with individuals who have significant disabilities.

[35] NPA selection information on file with the Commission. The final rule adopts some of the lessons from the Fort Knox pilot, although it adds the component of assessing an NPA's capacity to provide training and placements at the final stage of determining the NPA that will receive the contract.

[36] Memorandum of Understanding between the MICC, IMCOM, SourceAmerica, and the Commission, executed on September 14, 2022. On file with the Commission.

[37] 88 FR 15360 (2023).

NPAs; clarified the Commission's authority to authorize or deauthorize a NPA; and provided a right of first refusal of employment to the current employees of an incumbent NPA who are blind or have other significant disabilities for positions for which they are qualified.

The initial comment period was open for 60 days but was extended another 30 days for additional comments. After the comment period closed on June 12, 2023, the Commission had received 95 comments from various stakeholders and interested parties.[38] Comments were received from NPAs (50), both CNAs (2), private individuals (27), disability rights organizations (2), NPA advocacy groups (3), and anonymous commenters (11). The level of support also varied, with 6 commenters supporting the rule unconditionally, 40 others supported the rule subject to certain conditions, 45 commenters opposed the rule, and 4 comments were neutral or administerial in nature. One additional comment was received during the interagency review period from a disability rights advocacy group opposing the rule.

Of the 50 responding NPAs, 16 NPAs provided a comment signaling complete opposition to the proposed rule. The most significant concern for most commenters was the proposed rule's deviation from the Panel's recommendations. Commenters pointed out the proposed rule's lower threshold to trigger competition of $10 million total contract value,[39] not limiting competitions to government owned facilities/properties, not limiting competition to once every ten years, and the lack of consideration of a social impact factor in the NPA selection decision for a competitive distribution.

There were several commenters who also stated concerns about potential job losses due to competition. These commenters stated that if price is included in the NPA selection process, NPAs will cut costs at the expense of employees who are blind and have significant disabilities. In fact, nearly all private individuals who responded to the NPRM are employed by NPAs and feared that increased competition might cause them to lose their job. The disability rights advocacy group that offered a comment during the interagency review period, voiced a similar concern.

D. Changes From the NPRM

Section II provides a detailed explanation of the scope of comments received and the changes made in response. In summary, the most significant changes are as follows:

- The threshold to trigger competition has been bifurcated. For DoD and its components, the threshold at which the Commission may consider a request for competition under this regulation will apply to projects valued at greater than $50 million. The threshold at which the Commission may consider a request for competition under this regulation by civilian agencies remains at greater than $10 million total project value in recognition of the lower base value of their contracts.[40]
- As recommended, the final rule now states that if a competitive distribution is approved by the Commission, the CNA shall not permit price to have greater weight than the non-price factors when making an NPA selection decision.
- The final rule does not adopt the term ''social impact,'' but, in response to NPA comments, it now directs the CNA to consider criteria or subcriteria related to training and placements, and employment opportunities for all competitive distribution decision approved in accordance with § 51–3.4(d).
- The final rule requires that a competition shall not be approved by the Commission due to failed good faith bilateral price negotiations (price impasse), until the parties have exhausted all administrative remedies required by the Commission's pricing policies and procedures. The final rule also limits those impasse related competitions to service requirements that exceed $1 million in total project value.
- The final rule clarifies that all requests for competition must come from a Federal agency Senior Executive or Flag or General Officer and must be approved by the Commission. The rule also explains that the Commission must, at a minimum, consider the criteria under § 51–2.4 before approving a competitive distribution.
- The final rule is reorganized, and terms are amended to ensure consistency throughout the rule, where appropriate.

II. Public Comments on the NPRM

The Commission carefully considered all of the comments related to this rulemaking. We summarized the commenters' views and, where appropriate, responded to all significant issues raised by the commenters that were within the scope of this rule. This means that we did not respond to every aspect of every comment. Instead, we focused on the most significant comments that related to the essential thrust of this rule; namely, use of a price component in the NPA selection process and the use of price competition for establishing the FMP. We also did not summarize or respond to comments that were administerial or outside the scope of the proposed rule. An analysis of the public comments received and of the changes in the regulations since publication of the NPRM follows.

A. Withdraw the NPRM and Replace It With an Advanced Notice of Proposed Rulemaking (ANPRM)

Comments: Several commenters requested that the Commission withdraw the NPRM and substitute it with an ANPRM and requested a public hearing to allow for greater dialogue, outreach, and a more detailed analysis on the costs, benefits, and alternatives to competition. Some who made similar comments to withdraw the NPRM also requested a public hearing to discuss the proposed rule further. Other commenters cited Executive Order (E.O.) 12866 which requires proactive engagement of interested or affected parties to inform the development of regulatory agendas and plans and stated that the Commission has not complied with the E.O. because there had not been adequate engagement with stakeholders.

Discussion: There is no requirement for a Federal agency to issue an ANPRM before a NPRM, especially when, as in this case, the agency's decision has been informed by the four-years of work conducted by a Congressionally mandated Panel and a 5-year Strategic Plan that specifically called for these changes.[41] The purpose of an ANPRM is to gauge the public's interest in a rule and to help the Federal agency decide if a new rule is necessary.[42] As noted earlier, the main reason for this rule change was to address the basis for the COFC's enjoinment to the Commission's interim policies and previous efforts to introduce competition into the

[38] There were 100 total comments received, but 5 were duplicates.

[39] The Panel recommended that new work to the program and re-competition for service contracts valued at $10 million or greater annually and performed on Federal installations/properties would automatically be competed, unless the requiring activity provided a compelling reason why competition is unnecessary.

[40] The term contract is replaced with project because the threshold is tied to a specific requirement on the PL rather than a contract with several requirements or one large project under multiple contracts.

[41] OIRA's website states an agency uses an ANPRM only when an agency believes it needs to gather more information before issuing an NPRM.

[42] *Id.*

Program.[43] As such, there was no doubt that the agency needed to amend its regulations to carry out the Panel's recommendations and the guidance set forth in the Commission's 5-year Strategic Plan. Nevertheless, it has been the practice of this agency to consider stakeholders' interests and to actively engage the public whenever there is a significant change to the way the Commission administers the Program.

For this rulemaking, the use of an NPRM provided a sufficient avenue for comment on the proposed changes. We initially granted 60 days to provide comment on the proposed rule. Subsequently, in response to requests for additional time, we provided an additional 30 days for public comment. Although the Commission did not hold a public hearing, members of the Commission staff attended conferences held by both CNAs to discuss the merits and challenges of introducing a price-inclusive competition into the Program. Additionally, the Commission routinely discussed this issue during public meetings and devoted the Commission's entire July 13, 2023, public meeting to listen to public concerns and support for the proposed rule. The issues raised during that public meeting largely mirrored comments received during the public comment period for the NPRM, but the engagement was useful for all involved. This is the type of engagement contemplated by E.O. 12866, fulfilled through actively listening to each stakeholder and making decisions informed by the interests of all involved.

Changes to the Rule: None.

B. Statutory & Rulemaking Authority

Comments: A few commenters stated the proposed rule goes beyond the scope of the JWOD Act. In particular, NPAs asserted that price competition is a departure from how Congress intended the Program to operate, creates potential negative incentives that could harm the mission of the Program and individuals it intends to serve, and criticized the lack of consultation with Congress in part due to a perception that the Commission has offered no methodology for which contracts would be eligible for competition.

Other commenters in support of the proposed rule disagreed and acknowledged there is nothing that prevents the AbilityOne Commission from approving FMPs resulting from price competition.

Discussion: The final regulation addresses many of the concerns raised by commenters regarding possible adverse impacts from the proposed rule. In addition, in establishing the Panel, Congress gave DoD broad authority to suspend compliance with the Program if the Commission did not substantially implement the recommendations of the Panel. Not implementing the recommendation, and risking DoD suspension, would be directly inconsistent with the purpose of the JWOD Act.[44] The authority to act on the Panel's recommendations, through regulation, has also been recognized by the COFC.[45] The court wrote that ''Congress granted AbilityOne formal rulemaking authority, which it can and has used to establish the procurement scheme it desires.'' It went on to write ''[g]ranted [the Commission] must submit its rules to formal notice-and-comment procedures but at the end of the day, AbilityOne likely has the rulemaking authority to craft procurement procedures that include a price component.'' [46] In issuing an NPRM, receiving and considering public comments, and publishing this final rule, the Commission has met its obligations under the statute and all applicable regulations.

Changes to the Rule: No substantive changes.

C. Differences From 898 Panel Recommendations

a. $10 Million Total Project Value Competition Threshold

Comments: Many commenters expressed opposition to the proposed rule's competition threshold of $10 million in total contract value instead of the Panel's recommendation of $10 million annual value. A few commenters noted that the Panel focused only on DoD procurements and that the proposed rule's lower threshold went far beyond the Panel's focus and recommendations. Of particular concern to many commenters is the increased number of eligible contracts for competition from 46 to 346 due to the lower threshold in the proposed rule. Commenters stated that participating in price competition is costly for NPAs and lowering the threshold exposes smaller NPAs to competition that may not have the ability to compete with larger NPAs. Commenters also argued that over time larger NPAs will dominate these competitive contracts, resulting in less competition among NPAs in the Program.

Largely, commenters recommended adopting the Panel's competition threshold of $10 million annual value, because as one CNA stated, ''the 898 Panel struck the correct compromise in providing an opportunity for competition on the largest contracts with the greatest opportunity for savings.'' Alternatively, one NPA recommended a $15 million threshold for existing contracts to further protect small NPAs, while another commenter recommended the Commission consider adding an escalation rate to the contract value that aligns with required minimum wage increase requirements for Federal contractors under the Executive Order 14026.

The Commission also received comments in support of the proposed rule's $10 million total contract value threshold for competition. One commenter, for example pointed out that the Panel's recommended price competition threshold was mandatory and did not meet civilian Federal customer needs. The same commenter praised the Commission's decision to make competition discretionary as opposed to mandatory. Another supportive commenter believed the proposed rule would create new opportunities for other NPAs in the Program, thereby creating more jobs for individuals who are blind or have significant disabilities.

Discussion: Although it is generally true the Panel sought to create a policy that targeted service requirements valued at $10 million or greater annually, it did not foreclose the possibility of competing requirements under that threshold. On February 2020, Subcommittee Six established a policy working group to develop the proposed framework for executing the NPA selection process.[47] This included, but was not limited to, establishing business rules for competition and assignment of work among AbilityOne Program NPAs. The policy working group compiled its final analysis and completed a draft policy shortly before the Panel's sunset in January 2022.[48] The draft policy

[43] *Supra* note 9.

[44] *Supra* note 1 at (g)(1)(A).

[45] *See* 41 U.S.C. 8503(d)(1). The JWOD Act gives the Commission explicit and the sole authority to ''maintain and publish'' a PL. The Act further states that the Commission ''may prescribe regulations . . . as necessary to carry out this chapter.''

[46] *See also supra* note 9 at pp. 17–18.

[47] Third Annual Report to Congress, p. 33. at *https://www.acq.osd.mil/asda/dpc/cp/policy/docs/a1/Third_Annual_Report_to_Congress_(Signed_by_the_OUSD_AS_February_4,_2021).pdf* Third Panel Report to Congress, p. 33. *https://www.acq.osd.mil/asda/dpc/cp/policy/docs/a1/Third_Annual_Report_to_Congress_(Signed_by_the_OUSD_AS_February_4_2021).pdf.*

[48] *See* Fourth Panel Report to Congress, p. 29. The report refers to the draft policy that the Panel would provide to support the Commission's regulatory update. *https://www.acq.osd.mil/asda/dpc/cp/policy/docs/a1/4%20-%20Fourth%20and*

Continued

expressly stated that competition ''automatically applied to new and existing Procurement List actions for services estimated to exceed $10 million annually.'' [49] The policy also permitted the Commission, through written vote, to allow competition for ''new and existing PL actions for services with an estimated value less than $10 million.'' [50] In essence, the Panel's intention was to make competition *mandatory* for all requirements greater than $10 million annually, but discretionary for *any* service requirement below the threshold. In contrast, the threshold described in the NPRM is fully discretionary and limited to those requirements with a total contract value of $10 million or greater, except in the case of a price impasse. Both the Commission's NPRM and final rule threshold are more targeted and ultimately less expansive than the Panel's and Subcommittee Six's intended competition framework, subjecting far fewer service requirements to potential competition.

In setting the $10 million threshold, the Commission sought to make the Program more responsive to civilian Federal agencies. This decision was based on balancing the needs of civilian federal agencies and providing some measure of predictability to service-providing NPAs. For example, in SourceAmerica's 2022 Federal Customer Survey Final Report, the surveyed Federal customers reported an average 86% overall Program satisfaction rate for the five survey periods referenced in the report.[51] Over the same period, however, approximately 40.5% of surveyed Federal customers reported that the Program's products and services were overpriced when compared to other non-AbilityOne contractors.[52] Additionally, 25% of the surveyed customers reported it was unlikely they would pursue new contract opportunities through the AbilityOne Program, and 30% of the surveyed customers responded they were unlikely to expand current contracts with the Program.[53] When asked what ways the Program could be improved, several survey participants mentioned pricing, noting that ''similar services with non-NPAs are much less expensive.'' [54] The surveyed customers recommended the Commission provide for competition between NPAs, because the ability for Federal customers to compare market prices is not possible when they are compelled to negotiate price with one vendor.[55] Comments, recommendations, and survey results like this have led the Commission to conclude that the desire for competition was not limited to the DoD and its instrumentalities, thereby supporting a need for a lower requesting threshold for civilian Federal agencies. Therefore, in addition to the final rule incorporating the work of the Panel, the Commission determined that it was prudent to retain a threshold low enough to be responsive to the concerns and needs of civilian Federal agencies, but not so low that every or most requirements could be subject to the type of competition described in this rulemaking.

Changes to the Rule: The final rule bifurcates the thresholds to trigger competition eligibility for non-DoD Federal agencies and the DoD. The threshold will remain at $10 million total project value for the former but increased to $50 million total project value for the DoD and its components. The Commission also notes that the term ''contract'' has been replaced with the word ''project,'' because the threshold is tied to a specific requirement identified on the PL, rather than the value of a contract which could contain several requirements under a single contract, or one large project issued under multiple contracts.

b. Frequency of Competition

Comments: Commenters expressed concern over how often contracts would be recompeted, stating that competing contracts too often creates instability and administrative burden. Many commenters recommended adding a provision that a contract could not be recompeted for a 10-year period. Commenters stated longer contract periods allow the NPAs to extend major purchases over a longer period which provides cost savings to the Federal customer. One commenter also stated that recompeting too often potentially makes it harder to partner with commercial partners who are attracted to long-term contracts, especially at a time when the Commission has expressed interest in increasing partnering and subcontracting opportunities to expand competitive employment options. Some commenters also noted that routine competitions provide less incentives for NPAs to make major investments, because the NPA may not recoup the cost of those investments if it loses the order after the period of performance ends.

Discussion: After an initial competitive distribution has been completed, there would be little basis for the Commission to authorize another competition five years later, unless there are persistent concern(s) that had not been addressed from the last competition or new problems emerge. Although there is nothing in the rule to preclude a Federal agency from requesting competition every time a contract is up for renewal, it is highly unlikely that the Commission would approve routine requests for the same requirement. The Commission expects most Federal customers to be highly satisfied with their AbilityOne contractors and to prefer awarding sole source contracts as permitted by 10 U.S.C. 3204(a)(5) or 41 U.S.C. 3304(a)(5). Furthermore, Commission regulations already encourage agencies to ''to use the longest contract term available by law . . . in order to minimize the time and expense devoted to formation and renewal of these contracts.'' 41 CFR 51–6.3. The Commission will continue to promote the use of long-term agreements, especially where it provides lower administrative expenses for the Federal government and the service providing NPA.

As noted previously, the Fort Knox pilot was identified and executed after senior leader coordination and approval from the Army and the AbilityOne Commission. This approach ensured excellent lines of communication and robust responsiveness from the early stages of requirement development to NPA selection and contract award. Once this rule is finalized, similar coordination, collaboration, and approval will be a critical component for implementing this rule. The Commission also believes that senior level coordination will help to mitigate the frequency of competition, by requiring request to be vetted by the requesting Federal agency at least one level above the user level prior to submission to the Commission.

Changes to the Rule: The Commission has revised the final rule at § 51–3.4(b) to clarify that a request for competition must come from members of the Senior Executive Service or Flag or General Officers in acquiring Federal agencies

(Dec%202021).pdf#page=29.

[49] Draft Policy 51.303 is on file with the agency and available on the agency's website at FOIA Reading Room. In addition to the automatic competition trigger for requirements greater than $10 million annually, the policy permitted the Commission's executive director to waive a mandatory competition through a written request to the Commission from the CNA with concurrence from the Federal customer.

[50] *Id.*

[51] Source America Federal Customer Survey on file with agency. The report covered surveys conducted in 2014, 2016, 2018, 2020, and 2022. The numbers used in this rule represents the average over that period.

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

and require approval from the Commission.

c. A Factor for Social Impact

Comments: A significant number of commenters expressed concern that the proposed rule did not adopt the Panel's recommendation to include social impact as a factor for selecting an NPA. The commenters stated that omission of social impact in the proposed rule meant it would not be a factor in the competition process of selecting an NPA and that this would lead to a race to the lowest price at the expense of the mission of the Program. In large part, these commenters suggested that the Commission adopt the Panel's recommendation and make clear in the final rule that the best value trade-off includes an analysis of social impact in the final selection of an NPA to provide the requirement.

Some commenters also recommended adding explicit weighting criteria for each factor, with a handful of commenters requesting that social impact be the most heavily weighted factor and price be the least heavily weighted factor. Other commenters recommended prioritizing all non-price factors above price but did not recommend that social impact be the most heavily weighted factor. The purpose of these approaches, as described by the commenters, was to protect the Program's mission of employing individuals who are blind or have significant disabilities and ensuring that actions by NPAs to provide career development for employees were taken into account as a positive factor.

Additionally, multiple commenters recommended that the social impact include consideration of such things as maximizing job opportunities for individuals who are blind or have significant disabilities, direct labor ratios, NPA size, Quality Work Environment (QWE) certification, mentorship programs, teaming opportunities, and quality of employment. Other commenters suggested alternative criteria that should be considered under social impact, specifically, retention of employees who previously earned subminimum wage and potential disruption to the current workforce if there was a change in the NPA selected for the project. Other social impact factors recommended for consideration included the creation of impact-oriented safeguards to protect AbilityOne employees, such as no loss of seniority, no benefit changes, transportation to and from the job site, and preservation of career ladders and upward mobility.

Discussion: The term ''social impact'' is not used in the AbilityOne Program. It is an umbrella term created by Subcommittee Six to account for various Program-specific priorities described as follows:

> The results of the new proposed process will maximize competition within the Program and ensure equitable selection and allocation of work. This includes maximizing job opportunities for persons with disabilities, including veterans with disabilities, through the Social Impact proposal that will identify participation levels for these individuals. It will also consider the size of the NPA, mentorship programs, teaming opportunities, contributions to the community, and the quality of the employment of individuals with disabilities.[56]

The Commission considered using the term ''social impact'' and creating a definition but concluded that even if it were to do so, social impact is a broad idea that might mean many different things to the different members of the Federal acquisition community as well as other Program stakeholders. The Federal Acquisition Regulation (FAR) lists guiding principles for the Federal Acquisition System (FAR 1.102). One of these guiding principles is fulfilling public policy objectives. Nearly every single public policy objective is about having a positive social impact.

As examples, Federal acquisition seeks a social impact in promoting economic resiliency through the Buy America Act, Trade Agreements Act, and local purchasing during major disasters under the Stafford Act. Another set of public policy objectives with a social impact are in the sustainable purchasing space. Examples include Bio-based purchasing through USDA and EPA's Comprehensive Procurement Guidelines. Federal acquisition seeks a social impact in supporting small businesses and underserved socio-economic communities through a host of efforts including set-asides for small, disadvantaged, woman-owned small businesses, purchases to service-disabled veteran-owned small businesses, etc. There are many more examples. Out of concern that it is too broad of an umbrella term which would never be understood, the Commission did not adopt or attempt to define the term social impact.

However, a clearly stated social policy objective of the Program is to increase training, employment and placement opportunities for individuals who are blind or have other severe disabilities through the purchase of commodities and services from qualified nonprofit agencies employing persons who are blind or have other severe disabilities. 41 CFR 51–1.1. Strategic Objective II of the Commission's Strategic Plan for FY 2022–2026 reinforces this policy objective by seeking an increase in the number of ''good jobs'' and ''optimal jobs,'' as defined in the Strategic Plan, throughout the Program.[57] The Commission's work on updating its compliance policies, following issuance of the Strategic Plan, further solidified the Commission's commitment to enhancing the employment aspects of the Program. For example, in November 2023, the Commission finalized Commission Policy 51.400, which introduced the long-term objective of providing job individualizations, employee career plans, and career advancement programs.[58]

Until the Commission updates its regulations with terminology addressing the activities described above,[59] the Commission has determined that the most appropriate way to promote these types of activities is to use existing regulatory language regarding training and placements opportunities.[60] The rule makes clear that the Commission will approve criteria or subcriteria in support of these types of opportunities.

The final rule also requires that the selection official consider criteria or subcriteria related to employment opportunities for each competitive distribution.[61] This addresses the concern of many commenters that price competition between NPAs might reduce the number of individuals who are blind or have significant disabilities who are hired or may result in the substitution of employees whose disabilities are not as significant as those of other employees.

Finally, the rule makes clear that an NPA's capacity to create good and

[56] *Supra* note 47, page 32.

[57] *See supra* note 14.

[58] *www.abilityone.gov/laws,_regulations_and_policy/documents/Commission%20Policy%2051.400%20AbilityOne%20Commission%20Compliance%20Program%20-%20Jan%201,%202024%20-%20signed%20-%20508.pdf.*

[59] The Commission's Regulatory Agenda anticipates an update of regulation § 51–2.4 regarding suitability criteria. Amendments to the regulation are likely to include enumerated workforce development elements or broadly require adherence to Commission policies on employee training and career development initiatives. *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=3037-AA21.*

[60] The rewording emphasizes the policy goal of the Federal government described at Commission regulations 41 CFR 51–1.1. It also makes explicit reference to an NPA's responsibility to maintain an ongoing placement program under Commission regulation 41 CFR 51–4.3(b)(8).

[61] *Id.*

optimal jobs will be taken into account early in the competition process as well. If the Commission decides that a competitive distribution is appropriate, it will authorize at least two nonprofit agencies to serve as mandatory sources. In determining these authorizations, the Commission will apply the suitability criteria described at § 51–2.4. As the Commission made clear during the July 2023 public meeting, the ''special considerations'' referenced in Commission Policy 51.301 may include an NPA's record and capability in providing elements of employee training and career development. Indeed, these factors were considered during the Fort Knox pilot project.

Changes to the Rule: The final rule now directs the CNA to consider the capability of the NPA to provide training and placement, as well as employment opportunities, in making the selection decision. The rule also explains that the Commission must consider the criteria under § 51–2.4 before approving a competitive distribution and authorizing NPAs for the distribution.

d. Limiting Competition To Work Performed on Federal Property

Comments: Several commenters recommended adopting the Panel's recommendation that competition be limited to work performed on Federal property or at government owned facilities. Commenters raised the concern that the proposed rule did not consider the significant investment in infrastructure required when services are performed at an NPA location and are not portable or easily moved to another NPA location without significant unfavorable consequences.

Discussion: The Commission is aware that many NPAs have made significant investments in equipment, supplies, facilities, and personnel to perform work at NPA-owned or NPA-leased facilities. That was the principal reason this rule excludes products, because of the significant capital investments required to start and maintain a production line.

The Commission believes some of the future growth of the Program will come in knowledge-based jobs or in other jobs which can be performed remotely. Limiting this regulation to jobs which will be performed from a Government facility does not reflect the changing nature of many jobs.

Changes to the Rule: None.

D. Concerns About Price Being a Dominant Factor in Making the NPA Selection Decision

Comments: Several commenters expressed concern that there is nothing in the proposed rule that would prevent a requirement from simply going to the NPA offering the lowest price and that approach would lead to a ''race to the bottom.'' NPAs were concerned that if price becomes the deciding factor or the sole differentiator among technically capable bidders, the results of a competition could cause irreparable harm to the Program and the individuals who depend on it for support.

Other commenters raised similar concerns, such as stating that the proposed rule promoted price competition alone without considering other factors such as accommodating disabilities, productivity levels, costs of workforce integration and empowering individuals with disabilities, and costs of transitioning employees with disabilities into the private sector.

Commenters recommended a variety of guardrails to reduce the possibility of Lowest Price Technically Acceptable (LPTA) determinations. These recommendations included: requiring the Federal customer and incumbent NPA to engage in good faith bilateral negotiations prior to requesting price competition, not allowing re-competition if quality of service is not a factor, incorporating a best value tradeoff social impact criterion, and including language in the proposed rule that addresses when the LPTA is acceptable, similar to language in the FAR.[62]

Discussion: To address the concerns raised by commenters, the Commission has added language in the final rule to ensure that price will not have greater weight than the non-price factors for competitive distributions. It should also be noted that limiting the weight that price might have in a competitive distribution is a departure from the Panel's recommendation. The Panel left open the possibility of price having equal weight than the non-price factors. However, the final rule departs from this recommendation, which will serve as a signal to the NPA community and Federal agencies that price can be ''a'' factor, but it must be subordinate to the non-price factors for NPA selection. Lastly, but most importantly, nothing in this rulemaking is intended to supplant the Commission's statutory authority and responsibility to set the FMP.[63] For instance, if the Commission determines that the price resulting from a competition is dangerously low or out of synch with other Commission priorities, it retains the authority to adjust the final price or allow for additional price protections as necessary.

Changes to the Rule: Under § 51–3.4(d), the final rule now states that if a competitive distribution is approved by the Commission, the CNA shall not permit price to have greater weight than the non-price factors (combined) when making an NPA selection decision.

E. Job Losses

Comments: Several commenters were concerned about the downward effect of price competition on jobs in the Program, fearing individuals who are blind or have significant disabilities would be negatively impacted by the reduction of labor positions in response to their NPA providing competitive pricing. One of the CNAs argued that the proposed rule touted the benefits of competition without addressing the potential impact on employees with disabilities and that ''increased competition may force NPAs to evaluate who they can hire to support lower contract costs and greater efficiency.'' Several NPAs similarly stated that price competition incentivizes NPAs to focus on achieving the lowest price by hiring the most efficient workers with less significant disabilities, subcontracting out work, hiring on a part-time basis rather than employing individuals with the most significant disabilities, or transitioning individuals who are blind or have significant disabilities into employment outside of the Program. A few commenters also expressed concern about competition causing consolidation of NPAs which could also negatively impact jobs for individuals with disabilities. Two commenters requested there be a post-final-rule study on the impact on job loss for individuals with disabilities.

Discussion: The rule changes described in this rulemaking open the potential for attracting new and emerging jobs from Federal agencies. The changes also contain a number of protections to ensure a robust review before any competitions are accepted, discussed above. Finally, the rule now includes a requirement that the CNA consider training, placements, and employment opportunities in making the selection decision.

Changes to the Rule: The final rule directs the CNA to consider NPA capability of providing training, placements, and placement, as well as employment opportunity, as criteria or subcriteria for each NPA selection decision. In addition, as discussed

[62] *See* FAR 15.101–2(c).

[63] 41 U.S.C. 8503(b).

above, the changes ensure a robust review before requests for competition are accepted.

F. Directed Competition Due to Price Impasse

Comments: Several commenters disagreed with the provision allowing competition due to a price impasse. A primary concern voiced was that it gives the Federal customer little to no reason to avert impasse and as one NPA argued ''any contract could be approved for competition under the proposed rule . . . effectively opening the door for any government customer to prefer impasse as a means to render the contract eligible for competition.'' Commenters also expressed concern about the lack of criteria for when price competition would be directed and that the mere threat of competition would cause NPAs to accept prices below fair market value to the detriment of the NPA and employees. Many commenters that opposed the provision asked the Commission to remove the option from the proposed rule and leave the current impasse procedures in place.

Conversely, two commenters in support of the provision requested the price impasse provision only apply when other conditions are satisfied such as limiting it to contracts valued at $10 million annually and services operating on government-owned sites/facilities.

Discussion: During fiscal year 2023, the Commission oversaw the resolution of three price disputes between an NPA and a Federal agency using the Commission's current price impasse procedures. None of those impasse actions were for service contracts.[64] This is consistent with the annual average of two to three price impasse decisions over the last five years. The Commission does not expect the number of impasses to increase because of this rule change, since Federal agencies will still be required to exhaust the Commission's existing administrative procedures before a competitive option is considered. Even then, a competitive distribution would only be directed for requirements exceeding $1 million in total project value and when other methods for resolving a price impasse have proven ineffective.

Changes to the Rule: We have modified and reorganized § 51–3.4. First, we moved the impasse provision in the final rule from paragraph (c) to (e). We also added language clarifying that the Commission shall not direct a competition because of a price impasse until bilateral price negotiations consistent with § 51–2.7(b) are attempted in good faith, and that a Federal agency may not request competition until the parties have exhausted all administrative remedies required by the Commission's pricing policies and procedures. Lastly, we added language to the final rule that limits those impasse related competitions to service requirements that exceed $1 million in total project value.

G. Competition Will Drive Up NPA Costs

Comments: Several commenters expressed concern that the proposed rule did not include an adequate cost benefit analysis to the NPA community. Commenters largely argued that the proposed rule underestimated the costs to the NPA network to prepare bids, the cost to the Program for competition and re-competition, and the costs of stranded assets and trying to recapture those costs over a 5-year period. They further argued that the money to prepare the bids and proposals to compete would take funds away from NPAs spending to support their social mission.

Commenters argued the proposed rule did not adequately consider the impact and interaction with other simultaneous changes in the Program's policies and the new requirements upon NPAs that may impose additional costs. These commenters expressed concern that the proposed rule did not address the impact on an incumbent NPA, particularly when the NPA loses a contract that makes up a significant portion of the NPA's total revenue and the impact on subcontracting NPAs if the incumbent loses the contract.

A few commenters recommended the Commission evaluate using the Program Fee collected by the CNAs to mitigate the costs for the NPAs, with one commenter specifically recommending that the responsible CNA share in the increased cost burden by modifying the fees collected when competition occurs to help mitigate costs, while another commenter recommended eliminating the CNA Program Fee after the fifth year of a service contract on contracts valued at more than $10 million.

Discussion: The cost to prepare a response to an Opportunity Notice (proposal) may not be an insignificant matter for a competitive distribution. However, the Commission has, on balance, determined that any additional costs associated with competition are offset by the potential cost savings benefit Federal Government and the ability to attract new work performed by employees who are blind or have significant disabilities and retain existing requirements in the Program.

If an incumbent NPA is displaced by a competitive distribution, such displacement would result in a net loss to the outgoing NPA, but not to the Program. In addition, as noted throughout, Federal agencies may request a competitive distribution, but it will ultimately be up to the Commission to decide whether competition will occur. Commission discretion coupled with the relative infrequency of competitions, should result in an overall net gain for the Program and the ordering agency. Simply put, competitions will not be approved simply for the sake of competing, but when the overall benefits of competing reasonably outweigh other options.

Lastly, the Commission will continue to study the results of previous and future pilots, to best gauge how to offset unnecessary cost burdens associated with competition. However, comments related to mitigating cost through changes in CNA Program Fees is beyond the scope of this rulemaking.

With regard to the impact and interaction between this rule and other simultaneous changes in the Program's policies, the final rule requires the CNA to consider the NPA's activities in making some of these changes.

Changes to the Rule: The Commission has revised the final rule language at § 51–3.4(d) to limit frequency of competition through an approval process and inclusion of NPA capability regarding training and placements, as well as employment opportunities.

H. Criticisms of Pilots & Cost-Savings Projections

Comments: Several commenters claimed that the cost savings achieved by the pilots were exaggerated, costs to workers were ignored, and the results of two pilots were not sufficient information on which to base long-term changes to the Program. These commenters argued that cost savings and results did not capture or include the effect competition had on the incumbent NPA's retention of jobs or availability of training. One commenter noted that the pilot at Fort Bliss cost 60 jobs for people with significant disabilities and the curtailment of social impact support services and other programs designed to benefit the workforce.

Additionally, a few commenters contended that the discussion of the pilot savings was misleading and that the existing performance work statements (PWSs) and contractual

[64] There was one service requirement referred to the Commission for a price impasse decision, but the request for impasse was withdrawn before the Commission rendered a decision.

vehicles were significantly different from the original PWS and contracts issued in the competition. Commenters claimed these scope reductions and other substantial changes lowered the price regardless of price competition. Other commenters argued the blocked Fort Meade pilot resulted in bilateral negotiations which saved the Federal customer more money than the projected pilot savings.

Discussion: Like any complex Government requirement in which there are almost always changes from one year to the next, we agree that there were changes made to the PWSs for the pilot test requirements. Such changes are especially likely when the Government restructures a follow-on contract from the prior effort. Some commenters have asserted that changes to the requirement, rather than the impact of a price-inclusive NPA selection, are the reason for the cost savings from the pilots described in the NPRM. We disagree with this characterization. The Commission believes the best measure for the savings achieved with the pilots is seen when the price of the successful (or would be successful) NPA is compared to the Independent Government Cost Estimate (IGCE) and the proposed prices of the other NPAs involved in the competition.[65] When compared to the IGCE, the cost savings for Fort Bliss were approximately 12.7 percent. The NPRM stated that the cost savings were 12 percent. For Fort Meade, the savings were 14 percent when compared to the IGCE. The NPRM erroneously stated the cost savings were 17 percent, but the NPRM correctly stated the applicable totals; namely, $19.6 million estimated annual contract value compared to the $16.8 million annual contract value offered by NPA 4 (14 percent).

Under an IGSA, the DoD already has authority to use an alternative to the AbilityOne Program. Ensuring the DoD has a means to give it confidence that its use of the AbilityOne Program will result in good service at a fair market price is critical to ensuring the DoD's future use of the Program. The true benefit of the competition process, regardless of cost savings, was the requirement remained with AbilityOne.

Another point raised by some commenters was the claim that the price-inclusive competition at Fort Bliss caused 60 workers with significant disabilities to lose employment. The Commission rejects this assertion. First, the same commenter noted that the cost savings at Fort Bliss were the result of reductions in the scope of the requirement. As noted above, every contract undergoes changes in scope from one contract period of performance to the next. Sometimes the scope of work increases, and the contractor will need to employ a larger workforce to accomplish the mission. On other occasions, the scope is reduced, necessitating a reduction in the number of workers performing on the contract. In any event, if the loss in jobs was the result of a reduction in scope (*i.e.,* less work) the loss in jobs cannot be attributed to the competition. In fact, another commenter noted that it was able to achieve greater cost savings for the Federal agency through bilateral negotiations, but the commenter did not indicate that those cost savings adversely impacted AbilityOne employees.

Second, the Fort Bliss competitive pilot concluded in 2019.[66] Since that time, the entire nation experienced one of the most life-altering events in the history of the world—the COVID–19 pandemic. The pandemic not only caused a reduction in certain service requirements across the Federal Government, but many employees, those with and without disabilities, were fearful about returning to work. The pandemic caused unprecedented job losses across the country and employers in the AbilityOne Program and throughout the nation have struggled to bring employment levels back up to pre-pandemic levels. As such, it does not follow that every worker that is no longer working at Fort Bliss (or elsewhere) is not working because of the competition pilot in 2019.[67] There are numerous reasons impacting employee participation in the workforce, and employees in the AbilityOne Program are no exception.[68] In fact, the Commission authorized the selected NPA for the Fort Knox pilot to operate at a lower project level ratio not only to encourage the creation of integrated work environments, but to also address the challenges NPAs are experiencing in recruiting qualified personnel with disabilities in the current job market.[69]

Lastly, although it is permissible to use profits from an AbilityOne contract to finance social endeavors to support employees who are blind or have significant disabilities, it is generally not permissible to treat such costs as directly chargeable to the Government. With that said, the Commission does not dictate to an NPA how it should use its net proceeds. However, an NPA's decision to discontinue or reduce workforce development activities for workers who are blind or have significant disabilities will have a detrimental effect on its ability to compete for AbilityOne work in the future.

Changes to the Rule: None.

I. Right of First Refusal

Comments: A few commenters commended the Commission for protecting the jobs of employees who are blind or have significant disabilities by including a right of first refusal. However, other commenters raised concerns that this provision was not sufficient to protect employees. Commenters argued that even with this provision, there is concern that employees will lose their jobs due to pressure to reduce operating costs. Additional concerns were raised such as the same vocational supports the employee received not being available from the successful contractor, the disruptive nature of changing employers for some employees, and the NPA not having the primary opportunity to retain the employee.

These commenters asked that the rule include how these individuals will be supported, as well as specifications and funding for appropriate assistance and training to help displaced individuals with disabilities find new employment opportunities. Commenters also made recommendations that included using Executive Order 14055 Nondisplacement of Qualified Workers Under Service Contracts as a guide and revising the proposed rule to include

[65] One commenter noted that the new PWS for the Fort Bliss FSOS eliminated two requirements that were required under the predecessor effort (*i.e.,* service order desk and reduced reporting requirements). These requirements were not priced into the IGCE, because the IGCE was based off of the revised PWS, not the incumbent contract.

[66] Report on the 2018–2019 Competition Pilot Test for AbilityOne Program Nonprofit Agencies Facility Support and Operations Services Contract Fort Bliss, Texas. *AbilityOne Commission Report on Competition Pilot Test at Fort Bliss, Texas 2018–2019.*

[67] *See* U.S. Bureau of Labor Statistics article at *https://www.bls.gov/opub/mlr/2021/article/covid-19-ends-longest-employment-expansion-in-ces-history.htm.* The article states that ''[a]ccording to data from the U.S. Bureau of Labor Statistics (BLS) Current Employment Statistics (CES) survey, nonfarm payroll employment in the United States declined by 9.4 million in 2020, the largest calendar-year decline in the history of the CES employment series.''

[68] *See* U.S. Department of Commerce report at *https://www.uschamber.com/workforce/understanding-americas-labor-shortage.* The report states, ''[r]ight now, the labor force participation rate is 62.7%, down from 63.3% in February 2020. There's not just one reason that workers are sitting out, but several factors have come together to cause the ongoing shortage.''

[69] *See Id.* The report notes that ''[r]ight now, the latest data shows that we have 9.5 million job openings in the U.S., but only 6.5 million unemployed workers.''

specifications and funding for the provision of appropriate assistance and training to help displaced individuals with disabilities find new employment opportunities. One commenter suggested expansion of the right of first refusal provision to all projects on the PL regardless of project type. In contrast, another commenter recommended applying proposed § 51–5.1(f) to only service contracts, while another commenter recommended including a requirement that the employee only have the right of refusal if the employee decided to move to the new NPA and/or the losing NPA does not have an equal or better opportunity for continued employment for that individual.

Discussion: The right of first refusal is not limited to those authorizations where the change in NPA is the result of a competitive distribution. Any instance where an NPA is replaced by another NPA would trigger a participating employee's right of first refusal (for products or services). Although providing employee accommodations and supports are beyond the scope of this rule, there are other Commission policies and procedures aimed to ensure that there is standardized level of support NPAs are expected to provide to their AbilityOne workforce. This means that once a new NPA assumes responsibility for the existing workforce of an AbilityOne requirement it should be just as conscientious in supporting its inherited workforce as the incumbent. However, the Commission does recognize that there may be some instances where some NPAs are better at providing specific types of support to a given workforce than another. There is nothing in this rule that would preclude an incumbent NPA from offering an individual another job to retain his or services with its NPA. However, the right of first refusal is an employee's right that they may choose to exercise if they do not choose to seek other opportunities elsewhere.

Lastly, this regulatory change is designed to work in concert with Executive Order 14055 or any other Executive Order or rule aimed at protecting an incumbent workforce. The significance of this rule is that it directs NPAs to prioritize incumbent workers who are blind or have significant disabilities over all others when the work is being performed under a PL requirement. Although the potential funding needs of individual employees are beyond the scope of this rulemaking, the Commission will continue to collect and review data to determine if there is an unmet workforce need that might require additional funding to rectify.

Changes to the Rule: None.

J. Strain on Commission and CNA Resources

Comments: Several commenters expressed concern that the Commission and CNAs do not have the resources or the staff to handle the potential volume of competitions with a lower threshold and re-competitions due to the price impasse provision. Commenters also argued that the proposed rule lacked sufficient guardrails to limit the number of competitions to protect Commission and CNA resources. One commenter argued that the Commission and CNA do not have the expertise to conduct price competitions. This commenter recommended the procuring Federal agencies should be delegated authority to conduct the price competition, like the Small Business Act (SBA) competitive 8(a) Program at FAR 19.800, and that the Commission or CNAs should only provide the ''pool'' of qualified NPA candidates. One commenter recommended identifying and approving new distributions at least 24 months out so that the Commission, CNAs, and NPAs would have enough lead time to plan and execute.

Another commenter argued that while the NPRM stated that price competition would only be utilized in complex projects or cases that had unique requirements, the history of the pilot projects suggests that price competition is not intended for a select few items on the PL and that price competition is likely to be broadly applied and overwhelm Commission resources.

Discussion: Approving and managing competitive distributions, especially for existing requirements, may increase the workload for CNA and Commission staff. This means that the process for implementing changes will need to be done in a deliberate manner from initial approval to execution. The Commission currently has an existing framework for identifying and granting approval for complex projects. Complex projects must generally be identified and approved 24 months before project execution. A similar approach could be used for identifying and approving candidates for competition.

It is true that the Fort Bliss and Fort Meade pilots created additional workload for the Commission staff. The Fort Knox pilot was significantly less burdensome for Commission staff, but in turn required more work from the CNAs and the Federal customer in terms of overall management and evaluative support. Both CNAs have indicated that this additional workload would not come without cost in terms of time and other resources. The Commission recognizes planning will be important, as well as deliberate coordination with CNAs and Federal agencies desirous of pursuing a price-inclusive competitive option. The Federal customer provided expertise in pricing and technical support for all three pilots. When the final rule is implemented, the Federal customer will be expected to provide similar support. Lastly, the Commission believes the fact that approval of a competitive distribution is discretionary will allow the Commission to manage the workload of the number of requests approved on an annual basis.

Changes to the Rule: The Commission revised § 51–3.4(b) to clarify that requests for competition must come from members of the Senior Executive Service or Flag or General Officers in acquiring Federal agencies and that the Commission determines whether to approve the request. Availability of resources to conduct the competition is appropriately part of the decision process.

K. Alternative Methods to Price Competition

Comments: Several commenters recommended the Commission consider alternative methods to price competition to address the Federal customers' needs.

These same commenters provided the following alternatives to competition: analysis of supply schedules, approved indirect rate or a safe harbor based on the audit with a default rate, pricing methodologies that account for accommodations, use of FAR 15.404–1(b)(2) which includes guidance on factors to consider in determining ''fair and reasonable'' price outside of competition and which lists price analysis techniques, and use of an AbilityOne Supply Schedule. Additional recommendations included modernizing the Commission's and CNA's pricing methods and processes, training NPAs and contracting officers in best practices for bilateral negotiations and using the Contractor Performance Assessment Reporting System (CPARS) to improve contractor performance. One commenter noted that all agencies are exempt from the use of CPARS except DoD and suggested this exemption should be removed and thoroughly explored before engaging in re-competition.

Alternatively, another commenter suggested, rather than using price competition to establish the FMP, the Commission should improve the price impasse process. In addition to similar recommendations as above, the

commenter recommended strict time limits to prevent years-long impasses and a single appeal process where the Commission decides the price. The NPA would then accept the price or pass on the opportunity, and a competitive process that excludes price competition between NPAs would occur to replace the NPA. Another commenter stated that if the Commission's concerns about price relate to overhead and general and administrative (G&A) rates, then mechanisms already existed to control these concerns such as adding audited/accepted/certified indirect rates.

In contrast, one NPA proposed a procedure to address price or performance concerns not in lieu of competition, but as a prerequisite before the Commission would authorize a re-competition. This recommended process would require the contracting officer to submit a formal request to the Commission for a review at the mid-point of the contract period and the Federal customer would either document specific shortcomings for performance-based concerns or provide an IGCE or other price analysis for price-based concerns. The Commission would then authorize the CNA to conduct an independent pricing analysis or best practices assessment and conduct sessions with the Federal customer and NPA to address concerns with the NPA, submitting a plan to address these concerns. Only then would the Commission have the option to authorize a re-competition.

Discussion: The inclusion of price competition at § 51–2.7 as a tool for establishing the fair market price is just one option of the numerous options already available to the Commission. In fact, the most significant change in this rulemaking is to clarify the pricing tools available to the Commission. The Commission's current procedures encourage bilateral price negotiations between the NPA and contracting agency to establish price reasonableness. Currently, the Commission relies almost exclusively on these negotiations. The existing regulation also stated that other methodologies can be used, ''if agreed to by the negotiating parties.'' In interpreting this provision, the COFC found that, absent a change in the regulation, the Commission cannot consider other methodologies unless the NPA and contracting activity also agree.[70] The changes to § 51–2.7 eliminate this ambiguity and clarify the statutory authority of the Commission. The larger point here is that the changes proposed in this rulemaking provide the Commission with the flexibility to use price competition, in concert with other methodologies, for distribution decisions covered under this section.

Changes to the Rule: None.

L. Fair and Equitable

Comments: A small number of commenters also took issue with the removal of the phrase ''fair and equitable'' from § 51.3–4 in the proposed rule, believing that the removal meant prioritizing the needs of the requesting Federal agency would come at the expense of the NPA's equity interest.

Discussion: In most instances, only one NPA will be authorized to provide a good or service, based on the Commission's public policy objectives at the time a requirement is added to the PL. When a competition is requested, the CNA will still be expected to make recommendation decisions in a manner that is ''fair and equitable'' to the NPAs responding to the Opportunity Notice. For instance, there may be times when it might be advantageous to limit an Opportunity Notice to NPAs of a specific size, geographical area, or other special considerations approved by the Commission. Once a recommendation is made, the Commission will also consider the equity interest of each NPA when making an authorization decision. Again, in most instances the Commission will only be authorizing a single NPA to serve as a mandatory source. The change in language at § 51–3.4 was only meant to distinguish how CNAs will distribute orders when more than one NPA is authorized. However, for clarity, the Commission is adopting this comment and retaining the ''fair and equitable'' language from the existing § 51–3.4 into § 51–3.4(a) of the final rule.

Changes to the Rule: The Commission has moved ''fair and equitable'' language from the existing § 51–3.4 into § 51–3.4(a) of the final rule and makes clear that the distribution will also provide the best value for the requiring Federal agency and for the mission of the Program.

M. Deauthorization of an NPA

Comments: Some commenters took issue with the change in § 51–5.2 that clarified the Commission's authority to authorize and deauthorize mandatory sources.

Discussion: Only the Commission can authorize an NPA, and once an NPA is authorized, it naturally stands that the Commission has the authority to deauthorize an NPA if it has a legitimate basis for doing so. For example, this may occur if an NPA fails to maintain qualifications, no longer desires or is no longer capable of providing products or services to the Government, or is otherwise not performing up to the standards of the Commission or the Federal customer.

Changes to the Rule: None.

Regulatory Procedures

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and promoting flexibility. E.O. 13563 further recognizes that some benefits are difficult to quantify and provided that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

Impact of Final Rule

In the NPRM, the Commission acknowledged that the proposed rule changes were applicable to all NPAs and estimated the proposed rule change would have the most impact on 27 percent of NPAs, approximately 122 out of 450 NPAs. However, the final rule bifurcates the price competition threshold from $10 million in total project value for all service requirements on the PL to $50 million for DoD agencies and $10 million for non-DoD agencies. This change from the NPRM significantly reduces the final rule's impact and scope by over 50 percent, from approximately 346 to 155 PL service requirements. Additionally, the final rule's bifurcated price

[70] *Supra* note 9.

competition threshold substantially reduces the percentage of NPAs potentially impacted to 15 percent, approximately 63 NPAs.[71]

As discussed in the NPRM, an average of one-fifth of all applicable AbilityOne service contracts would be eligible for price competition in any given year. With the changes to the total annual contract value threshold, a maximum of approximately 31 contracts per year would be eligible for competitive distribution on an annualized basis. The exact number of price competitions will still be based on how many requests for price competition the Commission receives and ultimately approves. In SourceAmerica's 2022 Federal Customer Survey Final Report, the surveyed Federal customers reported satisfaction ranged from on average approximately 84% to 89% of Federal customers who responded to the survey were overall satisfied with their AbilityOne contractor.[72] Therefore, based on this data, of the 155 PL service requirements eligible for competition under this rule, the Commission generally anticipates that 11%–16% or 17–25 requirements may yield a request for competition over a 5-year period. As a result, the Commission estimates that the number of requests for price-inclusive competitions will likely fall somewhere between 3 to 5 per year in the first several years of implementation. This number could increase with the inclusion of the price impasse trigger. But as previously noted, the Commission receives an average of 2 price impasse requests on an annual basis, and a vast majority of those are for products which are outside the scope of this regulatory change.

The Commission believes the benefits of introducing a price component into the competitive distribution process includes increasing transparency in the NPA selection process, engaging the Federal customer in the process, and incentivizing better NPA performance and more competitive pricing. Most PL service requirements above the $10 million threshold are DoD contracts. Therefore, as discussed above, in response to public comments regarding the number of service requirements subject to potential price competition, the potential negative impact on smaller NPAs, and requests to align the rule's threshold to the Panel recommendation, the Commission raised the final rule's threshold to $50 million total project value for DoD agencies. However, the final rule preserves a lower threshold of $10 million total project value for non-DoD agencies and allows the Commission to remain responsive to the needs of civilian Federal agencies and the Commission's Strategic Plan.

Costs of the Final Rule

As discussed earlier in response to comments, competition is not mandatory, and the Commission's determination to approve a competition will be done on a case-by-case and informed basis. For both new and existing PL additions, if the Commission ultimately approves a request for a competitive distribution, authorized NPAs will incur the cost of preparing a competitive proposal. An incumbent NPA may also incur transition costs if it loses a competitive distribution, however, transition costs may be reimbursable under the existing Federal contract. Additionally, the competitive distribution process means an incumbent NPA is at risk of losing the revenue from a service requirement. However, the Commission notes that while the lost revenue is a cost for the incumbent NPA, the revenue would remain within the Program because the service requirement would go to another authorized NPA. For new PL additions, the cost of preparing a proposal is significantly outweighed by the new revenue stream into the Program.

SourceAmerica initially reported it would need 14 full-time equivalents (FTEs) in additional staff or $1.5 million annually to handle 336 potential price-inclusive competitive allocations. However, under the final rule's bifurcated threshold, CNAs would incur costs based on the approximately 155 service requirements that are eligible for a price competitive distribution, 150 of which fall under SourceAmerica. Based on this new reduced scope, if the Commission approved every request for a competitive distribution, SourceAmerica would need six full-time equivalents FTEs in additional staff or $670,000. But as noted above, approval of all 150 possible competitions over the 5-year period is highly improbable, based on available customer satisfaction data and the fact that Commission approval lies at the heart of every request. Additionally, even when a competition is approved, the CNAs' costs would likely be offset by the Federal customer's involvement and support. For instance, in support of each pilot, the requesting agency provided several FTEs of assistance in the form of price analyst, technical evaluators, and other subject matter experts.

Once the final rule is implemented, the Commission expects that if the Federal customer requests a competitive distribution, it will provide personnel to assist with the evaluation of technical capability, past performance, and price analysis. The cost to the Federal customer will ultimately vary based on how much support it provides to the Commission and applicable CNA. The Federal customer may also incur costs due to the disruption in contract performance or administrative costs associated with replacing an incumbent contractor, however, that is a calculation the Federal customer must make prior to requesting a competitive distribution.

The Commission initially estimated that it will need an additional budget of $1.75 million annually to support a competitive allocation.[73] Like the CNA estimate, these numbers were based on the worst-case scenario of 336 possible competitions. However, due to the reduced scope and the expectation that the Commission would likely process no more than 3 to 5 request per year, the cost to the agency would be no greater than a fourth of the original estimate or 3 to 4 additional FTEs (*i.e.,* a competition lead, a contract specialist, and up to two additional price analysts).

As discussed throughout this rulemaking, subsection (f)(2) of the Act directed the Commission to make a good faith effort to implement the Panel's recommendations. If the Commission unduly delayed or ignored the Panel's recommendations, in subsection (g)(1)(A) of the Act, the Secretary of Defense was given the authority to ''suspend compliance with the requirement to procure a product or service in Section 8504 of title 41, United States Code.'' Currently, DoD's spending represents over half of the Program's $4 billion portfolio, which creates tens of thousands of jobs for individuals with significant disabilities or who are blind. Introducing competition prevents DoD's withdrawal from, or reduced participation in, the Program, thereby protecting the jobs and objectives of the Program.

The Commission believes that the potential costs from implementation of the final rule are greatly outweighed by the benefits to the NPA community, the CNAs, and the Federal customer. As noted elsewhere, making the Program responsive to the Panel's recommendations will help to secure the jobs the Program currently creates and increase the agency's prospects of adding more opportunities.

[71] This calculation is based on a total of 413 NPAs in the program as of September 30, 2023.

[72] *Supra* note 51.

[73] *See* The Third Annual 898 Report to Congress, dated January 2021 at p. 33. This is based on analysis from the first two pilot tests conducted by the Commission, which called for hiring an additional 8–12 FTEs, benefits, equipment, and IT support.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA),[74] an agency can certify a rule if the rulemaking does not have a significant economic impact on a substantial number of small entities. This final rule only imposes a burden on NPAs with contracts that fall within the bifurcated threshold of $50 million in total project value for DoD agencies and $10 million in total project value for non-DoD agencies. In total, approximately 63 NPAs out of 413 participating NPAs have applicable contracts that may be impacted by this rule. This number, however, is only applicable if every possible contract is competed and, as discussed above, competition is not mandatory and is at the discretion of the Commission. Moreover, this rule only establishes business rules to improve the AbilityOne Program processes and does not require any new reporting, recordkeeping, or other compliance requirements for small entities.

Accordingly, the Commission certifies this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no final regulatory flexibility analysis has been prepared.

Unfunded Mandate Reform

This final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

Paperwork Reduction Act

This final rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Accordingly, it does not impose any burdens under the Paperwork Reduction Act and does not require further OMB approval.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule would not constitute a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign based companies in domestic and export markets.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Commission will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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List of Subjects

41 CFR Part 51–2

Government procurement, Individuals with disabilities, Organization and functions (Government agencies).

41 CFR Parts 51–3 and 51–5

Government procurement, Individuals with disabilities.

The Executive Director of the Commission, Kimberly M. Zeich, having reviewed and approved this document, is delegating the authority to electronically sign this document to Michael R. Jurkowski, for purposes of publication in the **Federal Register**.

Michael R. Jurkowski,

Director, Business Operations.

For reasons set forth in the preamble, the Commission amends 41 CFR parts 51–2, 51–3, and 51–5 as follows:

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

■ 1. The authority citation for part 51–2 is revised to read as follows:

Authority: 41 U.S.C. 8501–8506.

■ 2. Amend § 51–2.7 by:

■ a. Revising the second and third sentences and removing the fourth sentence of paragraph (a); and

■ b. Revising paragraphs (b) and (c).

The revisions read as follows:

§ 51–2.7 Fair market price.

(a) * * * The Committee is responsible for determining fair market prices, and changes thereto, for commodities and services on the Procurement List. The initial fair market price may be based on, where applicable, bilateral negotiations between contracting activities and authorized nonprofit agencies, market research, comparing the previous price paid, price competition, or any other methodology specified in Committee policies and procedures.

(b) The initial fair market price may be revised in accordance with the methodologies established by the Committee, which include, where applicable, bilateral negotiations between contracting activities and authorized nonprofit agencies assisted by central nonprofit agencies, the use of economic indices, price competition, or any other methodology permitted under the Committee's policies and procedures.

(c) After review and analysis, the central nonprofit agency shall submit to the Committee the recommended fair market price and, where a change to the fair market price is recommended, the methods by which prices shall be changed to the Committee, along with the information required by Committee pricing procedures to support each recommendation. The Committee will review the recommendations, revise the recommended prices where appropriate, and establish a fair market price, or change thereto, for each commodity or service which is the subject of a recommendation.

PART 51–3—CENTRAL NONPROFIT AGENCIES

■ 3. The authority citation for part 51–3 continues to read as follows:

Authority: 41 U.S.C. 8501–8506.

■ 4. Revise § 51–3.4 to read as follows:

§ 51–3.4 Distribution of orders.

(a) Central nonprofit agencies shall distribute orders from the Government only to nonprofit agencies which the Committee has authorized to furnish the specific commodity or service. When the Committee has authorized two or more nonprofit agencies to furnish a specific commodity or service, the central nonprofit agency shall distribute orders in a manner that is fair and

[74] 5 U.S.C. 605.

equitable to each authorized nonprofit agency, and that provides the best value for the requiring Federal agency and best meets the mission of the Program.

(b) For new and existing Procurement List services that are estimated to exceed $10 million in total project value for a Federal agency, other than the Department of Defense and its components, or $50 million in total project value for the Department of Defense and its components, inclusive of the base period and all option periods, a Federal agency may, at the Senior Executive Service or Flag or General Officer level, request that the procurement be distributed to an authorized nonprofit agency on a competitive basis among all authorized nonprofit agencies. In addition to the requirements described at part 51–6 of this chapter, the requesting Federal agency shall advise the Committee of the rationale for competition, whether it will provide resources to support the competitive process, the independent government cost estimate of the contract being competed or of the resources to support the competitive process, any information pertaining to performance, and such other information as is requested by the Committee. The Committee will answer a request within 60 days of receipt unless additional information is needed.

(c) If the Committee accepts a request from a Federal agency for competitive distribution, the action will be forwarded to the responsible central nonprofit agency for assessment in accordance with § 51–3.2(b) through (d). Upon receipt of a recommendation from the central nonprofit agency, the Committee will determine whether a competitive distribution is appropriate after considering the suitability criteria described at § 51–2.4 of this chapter and applicable Committee policies and procedures. If the Committee decides that a competitive distribution is appropriate and authorizes at least two nonprofit agencies to serve as mandatory sources, a competitive distribution may commence upon notification in the **Federal Register**.

(d) After notification, the responsible central nonprofit agency shall select the authorized nonprofit agency that it determines provides the best value for the ordering Federal agency and meets the mission of the Program in accordance with the Committee's policies and procedures. The selection decision shall be based on criteria approved by the Committee, such as technical capability, past performance, and price. The selection decision may also consider any other criteria or subcriteria specific to the service requirement. In addition, each selection decision shall consider criteria or subcriteria that address the nonprofit agency's capability to provide opportunities related to training and placements, as well as employment, for individuals who are blind or have significant disabilities. Criteria may be weighted, but price shall not have greater weight than the non-price factors when combined, except for competitive distributions directed by the Committee in accordance with paragraph (e) of this section.

(e) The Committee may also direct a competitive distribution in accordance with paragraph (c) of this section for any service requirement already on the Procurement List that exceeds a total project value of $1 million, if bilateral negotiations described at § 51–2.7(b) of this chapter are attempted in good faith but fail to produce a recommendation to the Committee for revising the fair market price. A Federal agency may not request, and the Committee shall not direct a competitive distribution based solely on failed price negotiations, until the parties have exhausted all available remedies established within the Committee's pricing policies and procedures.

(f) Any dispute arising out of a competitive distribution decision described at paragraph (d) of this section shall be submitted to the appropriate central nonprofit agency for resolution. If the affected nonprofit agency disagrees with the central nonprofit agency's resolution, it may appeal that decision to the Committee for final resolution. Appeals must be filed with the Committee within five business days of the nonprofit agency's notification of the central nonprofit agency's resolution decision, and only a nonprofit agency that participated in the competitive distribution process described at paragraph (c) of this section may file an appeal.

PART 51–5—CONTRACTING REQUIREMENTS

■ 5. The authority citation for part 51–5 continues to read as follows:

Authority: 41 U.S.C. 8501–8506.

■ 6. Amend § 51–5.2 by revising the section heading and paragraphs (a), (b), (c), and (e) and adding paragraph (f) to read as follows:

§ 51–5.2 Authorization/deauthorization as a mandatory source.

(a) The Committee may authorize one or more nonprofit agencies to provide a commodity or service on the Procurement List. Nonprofit agencies that have been authorized as mandatory sources for a commodity or service on the Procurement List are the only authorized sources for providing that commodity or service until the nonprofit agency has been deauthorized by the Committee in accordance with the Committee's policies and procedures. To meet the needs of the ordering Federal agency, the central nonprofit agencies may distribute the commodity or service to one or more nonprofit agencies in accordance with § 51–3.4(a) of this chapter.

(b) After a determination of suitability for approving items on the Procurement List, the Committee will authorize the most capable nonprofit agencies as the mandatory source(s) for commodities or services. Commodities and services may be purchased from nonprofit agencies; central nonprofit agencies; Government central supply agencies, such as the Defense Logistics Agency, Department of Veterans Affairs, and General Services Administration; and certain commercial distributors. (Identification of the authorized sources for a particular commodity may be obtained from the central nonprofit agencies indicated by the Procurement List which is found at *www.abilityone.gov*.)

(c) Contracting activities shall require that their contracts with other organizations or individuals, such as prime vendors providing commodities that are already on the Procurement List to Federal agencies, require that the vendor orders these commodities from the sources authorized by the Committee.

* * * * *

(e) Contracting activities procuring services, which have included within them services on the Procurement List, shall require their contractors for the larger service requirement to procure the included Procurement List services from nonprofit agencies authorized by the Committee.

(f) If the Committee deauthorizes a nonprofit agency as the mandatory source, the deauthorized nonprofit agency shall ensure as many of its employees who are blind or have other significant disabilities as practicable remain on the job with the new authorized successor nonprofit agency. The successor nonprofit agency is required to offer a right of first refusal of employment under the successor contract to current employees of the deauthorized nonprofit agency who are blind or have other significant disabilities for positions for which they are qualified. The deauthorized nonprofit agency shall disclose necessary personnel records in accordance with all applicable laws

protecting the privacy of the employee to allow the successor nonprofit agency to conduct interviews with those identified employees. If selected employees agree, the deauthorized nonprofit agency shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits and other relevant employment and Program eligibility information to the successor nonprofit agency. The requirement for a successor nonprofit agency to offer the right of first refusal also applies to an authorized nonprofit agency that is no longer serving as the mandatory source because of a competitive distribution under § 51–3.4(d) of this chapter.

[FR Doc. 2024–05717 Filed 3–21–24; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 24–241; FR ID 209156]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of FM Allotments, of the Federal Communications Commission's (Commission) rules, by reinstating certain channels as a vacant FM allotment in various communities. The FM allotments were previously removed from the FM Table because a construction permit and/or license was granted. These FM allotments are now considered vacant because of the cancellation of the associated FM authorizations or the dismissal of long-form auction FM applications. A staff engineering analysis confirms that all of the vacant FM allotments complies with the Commission's regulations. The window period for filing applications for these vacant FM allotments will not be opened at this time. Instead, the issue of opening these allotments for filing will be addressed by the Commission in subsequent order.

DATES: Effective March 22, 2024.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order,* adopted March 12, 2024, and released March 12, 2024. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will not send a copy of the *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because these allotments were previously reported.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202(b), amend the Table of FM Allotments by:

■ a. Adding the entry for ''North English'' in alphabetical order under Iowa;

■ b. Adding the entry for ''Colfax'' in alphabetical order under Louisiana;

■ c. Adding the entry for ''Calhoun City'' in alphabetical order under Mississippi;

■ d. Adding the entry for ''Battle Mountain'' in alphabetical order under Nevada;

■ e. Under Oregon:

■ i. Revising the entry for ''Huntington''; and

■ ii. Adding entries for ''Independence'' and ''Monument'' in alphabetical order;

■ f. Adding the entry for ''Murdo'' in alphabetical order under South Dakota;

■ g. Adding the entry for ''Selmer'' in alphabetical order under Tennessee; and

■ h. Adding the entries for ''Camp Wood,'' ''Cotulla,'' ''Los Ybanez,'' ''Ozona,'' and ''Stamford'' in alphabetical order under Texas.

The additions and revision read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

U.S. States	Channel No.
* * * * *	
Iowa	
* * * * *	
North English	246A
* * * * *	
Louisiana	
Colfax	267A
* * * * *	
Mississippi	
* * * * *	
Calhoun City	272A
* * * * *	
Nevada	
Battle Mountain	253C2
* * * * *	
Oregon	
* * * * *	
Huntington	228C1, 294C1
Independence	274C0
Monument	280C3
* * * * *	
South Dakota	
* * * * *	
Murdo	265A
Tennessee	
* * * * *	
Selmer	288A
Texas	
* * * * *	
Camp Wood	251C3
* * * * *	
Cotulla	289A
* * * * *	
Los Ybanez	253C2
* * * * *	
Ozona	275A
* * * * *	
Stamford	233A
* * * * *	

[FR Doc. 2024–05941 Filed 3–21–24; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 240314–0080]

RIN 0648–BM78

Fisheries of the Northeastern United States; Framework Adjustment 38 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements the measures included in Framework Adjustment 38 to the Atlantic Sea Scallop Fishery Management Plan as adopted and submitted by the New England Fishery Management Council. Framework 38 establishes scallop specifications and other measures for fishing years 2024 and 2025. Framework 35 implements measures to protect small scallops which would thereby support rotational access area trips to the fleet in future years. To promote uniformity in the fishery, this final rule also corrects and clarifies regulatory text that is unnecessary, outdated, or unclear. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

DATES: Effective on April 1, 2024, except for the amendment to § 648.10(c)(1)(ii), which is effective April 22, 2024.

ADDRESSES: The New England Fishery Management Council (Council) has prepared an environmental assessment (EA) for this action that describes the measures in Framework 38 and other considered alternatives and analyzes the impacts of the measures and alternatives. The Council submitted Framework 38 to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and an Initial Regulatory Flexibility Analysis (IRFA). Copies of the draft of Framework 38, the draft EA, the IRFA, and information on the economic impacts of this rulemaking are available upon request from Dr. Cate O'Keefe, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/scallop-framework-38.*

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233, *travis.ford@noaa.gov.*

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council adopted Framework Adjustment 38 to the Atlantic Sea Scallop FMP on December 6, 2023. The Council submitted Framework 38, including a draft EA, for NMFS review and approval on February 26, 2024. NMFS published a proposed rule for Framework 38 on February 12, 2024 (89 FR 9819). To help ensure that the final rule would be implemented before the start of the fishing year on April 1, 2024, the proposed rule included a 15-day public comment period that closed on February 27, 2024. Except as explained below with respect to section 305(d), NMFS is issuing this rule pursuant to 304(b)(1)(A) rulemaking authority. NMFS has approved all of the measures in Framework 38 recommended by the Council. This final rule implements Framework 38, which sets scallop specifications and other measures for fishing years 2024 and 2025, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2024, and default specifications for fishing year 2025. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here. This final rule also addresses regulatory text that is unnecessary, outdated, or unclear pursuant to section 305(d) of the Magnuson-Stevens Act.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), Annual Projected Landings (APL) and Set-Asides for the 2024 Fishing Year, and Default Specifications for Fishing Year 2025

The Council set the OFL based on a fishing mortality rate (F) of 0.61, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop benchmark stock assessment that was completed in September 2020. The ABC and the equivalent total ACL for each fishing year are based on an F of 0.45, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 47.4 million pounds (lb; 21,497 metric tons (mt)) for 2024 and 49.8 million lb (22,586 mt) for the 2025 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2025 when the Council develops the next framework adjustment.

Table 1 outlines the scallop fishery catch limits.

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2024 AND 2025 FOR THE LIMITED ACCESS AND LIMITED ACCESS GENERAL CATEGORY (LAGC) INDIVIDUAL FISHING QUOTA (IFQ) FLEETS

Catch limits	2024 (mt)	2025 (mt) [a]
OFL	33,406	35,241
ABC/ACL (discards removed)	21,497	22,586
Incidental Landings	23	23
Research Set-Aside (RSA)	578	578
Observer Set-Aside	215	226
Northern Gulf of Maine (NGOM) Set-Aside	191	143
ACL for fishery	20,490	21,616
Limited Access ACL	19,363	20,427
LAGC Total ACL	1,127	1,189
LAGC IFQ ACL (5 percent of ACL)	1,024	1,081

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2024 AND 2025 FOR THE LIMITED ACCESS AND LIMITED ACCESS GENERAL CATEGORY (LAGC) INDIVIDUAL FISHING QUOTA (IFQ) FLEETS—Continued

Catch limits	2024 (mt)	2025 (mt) [a]
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	103	109
Limited Access ACT	16,781	17,703
APL (after set-asides removed)	11,609	([a])
Limited Access APL (94.5 percent of APL)	10,971	([a])
Total IFQ Annual Allocation (5.5 percent of APL) [b]	638	479
LAGC IFQ Annual Allocation (5 percent of APL) [b]	580	435
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	58	44

[a] The catch limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2025 that will be based on the 2024 annual scallop surveys.
[b] As a precautionary measure, the 2025 IFQ and annual allocations are set at 75 percent of the 2024 IFQ Annual Allocations.

This action deducts 1.275 million lb (578 mt) of scallops annually for 2024 and 2025 from the respective ABC for use as the Scallop RSA to fund scallop research. Vessels participating in the Scallop RSA are compensated through the sale of scallops harvested under RSA projects. Of the 1.275 million-lb (578-mt) allocation, NMFS has already allocated 125,941 lb (57,126 kg) to previously funded multi-year projects as part of the 2023 RSA awards process. NMFS reviewed proposals submitted for consideration of 2024 RSA awards and intends to announce project selections in late March. Details on the 2024 RSA awards will be posted on our website when announced.

This action also deducts one percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 473,994 lb (215 mt) for 2024 and 498,245 lb (226 mt) for 2025. The Council may adjust the 2025 observer set-aside when it develops specific, non-default measures for 2025. In fishing year 2024, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.12 DAS per DAS fished. For access area trips, the compensation rate is 250 lb (113.4 kg), in addition to the vessel's possession limit for the trip for each day or part of a day an observer is onboard.

For LAGC IFQ trips less than 24 hours, a vessel will be able to harvest the trip limit and the daily compensation rate on the observed trip, or the vessel could harvest any unfished compensation on a subsequent trip while adhering to the commercial possession limit. LAGC IFQ vessels may possess an additional 250 lb (113.4 kg) per trip on trips less than 24 hours when carrying an observer.

For trips exceeding 24 hours, the daily compensation rate of 250 lb (113.4 kg) will be prorated at 12-hour increments. The amount of compensation a vessel can receive on one trip will be capped at 2 days (48 hours) and vessels fishing longer than 48 hours will not receive additional compensation allocation. For example, if the observer compensation rate is 250 lb/day (113.4 kg/day) and an LAGC IFQ vessel carrying an observer departs on July 1 at 2200 and lands on July 3 at 0100, the length of the trip would equal 27 hours, or 1 day and 3 hours. In this example, the LAGC IFQ vessel would be eligible for 1 day plus 12 hours of compensation allocation, *i.e.,* 375 lb (170.1 kg).

For NGOM trips, a vessel will be able to harvest the trip limit and the daily compensation rate on the observed trip. NGOM vessels may possess an additional 125 lb (56.7 kg) per trip when carrying an observer.

NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside.

Open Area Days-at-Sea (DAS) Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.,* full-time, part-time, and occasional) for 2024 and 2025 (table 2). The 2024 DAS allocations are less than those allocated to the limited access fleet in 2023. Framework 38 sets 2025 DAS allocations at 75 percent of fishing year 2024 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2025 specifications action is delayed past the start of the 2025 fishing year. The allocations in table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2023 sub-ACL.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2024 AND 2025

Permit category	2024	2025 (default)
Full-Time	20	15

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2024 AND 2025—Continued

Permit category	2024	2025 (default)
Part-Time	8	6
Occasional	1.67	1.25

Changes to Fishing Year 2024 Sea Scallop Rotational Area Program

For fishing year 2024 and for the start of 2025, Framework 38 combines and expands the boundaries of the Nantucket Lightship-West and Nantucket Lightship-North to form one area called the Nantucket Lightship Rotational Area (table 3). This expanded area is closed to better support rotational access in the future.

TABLE 3—NANTUCKET LIGHTSHIP SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
NLS1	40°49.8′	69°0.0′
NLS2	40°49.8′	69°30.0′
NLS3	40°43.2′	69°30.0′
NLS4	40°43.2′	70°19.8′
NLS5	40°26.4′	70°19.8′
NLS6	40°19.8′	70°0.0′
NLS7	40°19.8′	68°48.0′
NLS8	40°33.0′	68°48.0′
NLS9	40°33.0′	69°0.0′
NLS1	40°49.8′	69°0.0′

For fishing year 2024 and the start of 2025, Framework 38 divides Area I into three separate areas (*i.e.,* Area I, Area I-Sliver, and Area I-Quad). Area I (table 4) will be closed to the limited access fleet, but is available for LAGC IFQ fishing until the Regional Administrator has determined that the total number of LAGC IFQ access area trips have been or are projected to be taken. Area I-Sliver (table 5) will remain closed to all scallop fishing to protect small scallops. Area I-Quad (table 6) will also be closed to all scallop fishing to protect transplanted scallops related to an

ongoing RSA project. The Area I-Quad closure will remain in place for one year, and then revert to being part of the Area I Rotational Area.

TABLE 4—AREA I SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
AIA1	40°58.2′	68°30′
AIA2	40°55.8′	68°46.8′
AIA3	41°3.0′	68°52.2′
AIA4	41°0.6′	68°58.2′
AIA5	41°4.2′	69°1.2′
AIA6	41°25.8′	68°30′
AIA1	40°58.2′	68°30′

TABLE 5—AREA I-SLIVER SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
AIS1	41°30.0′	68°30.0′
AIS2	41°25.8′	68°30.0′
AIS3	41°4.2′	69°1.2′
AIS4	41°30.0′	69°22.8′
AIS1	41°30.0′	68°30.0′

TABLE 6—AREA I-QUAD SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
AIQ1	40°55.2′	68°53.4′
AIQ2	41°0.6′	68°58.2′
AIQ3	41°3.0′	68°52.2′
AIQ4	40°55.8′	68°46.8′
AIQ1	40°55.2′	68°53.4′

Framework 38 keeps the Area II Scallop Rotational Area open for fishing year 2024. In addition, it opens the New York Bight Scallop Rotational Area (table 7) to scallop fishing as part of the Rotational Area Program. The New York Bight Scallop Rotational Area was previously closed to optimize growth of the several scallop year classes within the closure area and to support scallop fishing and is now ready for fishing.

TABLE 7—NEW YORK BIGHT SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
NYB1 ..	40°00′	73°20′
NYB2 ..	40°00′	72°30′
NYB3 ..	39°20′	72°30′
NYB4 ..	39°20′	73°20′
NYB1 ..	40°00′	73°20′

Elephant Trunk Scallop Rotational Area Reverting to Open Area

Framework 38 reverts the Elephant Trunk Scallop Rotational Area to part of the open area. This area was previously managed as part of the area rotation program; however, there is not enough biomass to support rotational access, nor was there enough recruitment seen in the 2023 annual survey to support keeping this area as part of the program. Based on this information, it no longer meets the criteria for either closure or controlled access as defined in 50 CFR 648.55(a)(6). This area will become part of the open area and could be fished as part of the DAS program or on LAGC IFQ open area trips.

Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 8 provides the limited access full-time allocations for all of the access areas for the 2024 fishing year and the first 60 days of the 2025 fishing year. These allocations could be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in table 8) on any one trip.

TABLE 8—SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2024 AND 2025

Rotational access area	Scallop per trip possession limit (per trip)	2024 Scallop allocation	2025 Scallop allocation (default)
Area II	12,000 lb (5,443 kg)	24,000 lb (10,886 kg)	0 lb (0 kg).
New York Bight	12,000 lb (5,443 kg)	12,000 lb (5,443 kg)	0 lb (0 kg).
Total		36,000 lb (16,329 kg)	0 lb (0 kg).

Changes to the Full-Time Limited Access Vessels' One-for-One Access Area Allocation Exchanges

Framework 38 allows full-time limited access vessels to exchange access area allocation in 6,000-lb (2,722-kg) increments. The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into an access area for another full-time limited access vessel's unharvested scallop pounds allocated into another access area. For example, a full-time vessel may exchange 6,000 lb (2,722 kg) from one access area for 6,000 lb (2,722 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 12,000 lb (5,443 kg) from one access area for 12,000 lb (5,443 kg) allocated to another full-time vessel for another access area. These exchanges may be made only between vessels with the same permit category; a full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Part-time vessels may not exchange access area allocations.

Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 9 provides the limited access part-time allocations for all of the access areas for the 2024 fishing year and the first 60 days of the 2025 fishing year. Vessels may fish the allocation in either of the open access areas (*i.e.,* Area II and New York Bight). These allocations can be landed in as many trips as needed, so long as a vessel does not exceed the possession limit (table 9) or its available allocation on any one trip.

The proposed rule for Framework 38 incorrectly listed the possession limit for part-time vessels on access area trips as 7,200 lb (3,266 kg) per trip. The correct possession limit is 14,400 lb (6,532 kg) per trip.

TABLE 9—SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2024 AND 2025

Rotational access area	Scallop per trip possession limit	2024 Scallop allocation	2025 Scallop allocation (default)
Area II or New York Bight[a]	14,400 lb (6,532 kg)	14,400 lb (6,532 kg)	0 lb (0 kg).
Total		14,400 lb (6,532 kg)	0 lb (0 kg).

[a] Allocation can be fished in either Area II and/or New York Bight Access Areas.

5-Minute Vessel Monitoring System (VMS) Reporting on Federal Scallop Trips

Framework 38 requires that all scallop vessels with active VMS units be subject to constant reporting at 5-minute intervals when seaward of the VMS demarcation line on a federal scallop declaration. When inshore of the VMS demarcation line, vessels will report at a 30-minute interval. The increased VMS reporting rate is not intended to apply to vessels participating in state-waters scallop fisheries and excludes any scallop trip associated with the scallop state water exemption program. VMS is used in the scallop fishery as an enforcement and management tool. Increasing the VMS reporting rate to 5-minutes on declared scallop trips will improve enforcement of access area and closure boundaries by substantially reducing the window in which a vessel could enter or fish a closed area or access area undetected. VMS is also an important source of fishery effort data for the scallop fishery. Increasing the VMS reporting rate in the scallop fishery will improve data quality by increasing the spatial resolution of the data, which could lead to more effective management and enforcement.

Prohibition on Transiting Scallop Rotational Areas and the Western Gulf of Maine Closure Area

To better enforce the Sea Scallop Rotational Area Management Program, Framework 38 prohibits all vessels fishing under a scallop declaration from entering or transiting any scallop rotational areas (unless the vessel is on a declared trip into that area, or otherwise specified) and the Western Gulf of Maine Closure Area. For fishing year 2024, the Area I (table 4) and the Area I-Quad (table 6) Scallop Rotational Areas will be corridors for continuous transiting, and transit will be permitted. Continuous transit means that a vessel has fishing gear stowed and not available for immediate use and travels through an area with a direct heading, consistent with navigational safety, while maintaining expeditious headway throughout the transit without loitering or delay. Prohibiting vessels on declared scallop trips from entering or transiting scallop rotational areas (unless otherwise specified) and the Western Gulf of Maine Closure Area will reduce the likelihood of fishing occurring inside these areas.

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ-Only Permits. This action implements a 2.26 million-lb (1,024-mt ACL for 2024 and a 2.40 million-lb (1,089-mt) default ACL for 2025 for LAGC vessels with IFQ-only permits (table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to the LAGC IFQ-only fleet for fishing years 2024 and 2025 based on APL will be 1.28 million lb (580 mt) for 2024 and 959,011 lb (435 mt) for 2025 (table 1). Each vessel's IFQ will be calculated from these allocations based on APL.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits. This action implements a 227,076-lb (103-mt) ACL for 2024 and a default 240,304-lb (109-mt) ACL for 2025 for limited access scallop vessels with IFQ permits (table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits will be 127,868 lb (58 mt) for 2024 and 97,003 lb (44 mt) for 2025 (table 1). Each vessel's IFQ will be calculated from these allocations based on APL.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 38 will allocate LAGC IFQ vessels a fleet-wide number of trips for fishing year 2024 and no default trips for fishing year 2025 (table 10). The scallop catch associated with the total number of trips for all areas combined (856 trips) for fishing year 2024 is equivalent to 5.5 percent of total projected catch from access areas.

LAGC Access Area trips can be taken in any of the available areas (Area I, Area II, or New York Bight). Once the Regional Administrator has determined that the total number of LAGC IFQ access area trips have been or are projected to be taken all of the access areas will then be closed to LAGC IFQ fishing.

TABLE 10—FISHING YEARS 2024 AND 2025 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

Scallop access area	2024	2025[a]
Area I/Area II/New York Bight[b]	856	0
Total	856	0

[a] The LAGC IFQ access area trip allocations for the 2025 fishing year are subject to change through a future specifications action or framework adjustment.

[b] LAGC Access Area trips can be taken in any of the available areas until Regional Administrator determines that the total number of LAGC IFQ trips have been or are projected to be taken.

4. NGOM Scallop Fishery Landing Limits and Platts Bank Scallop Rotational Closed Area. This action implements total allowable landings (TAL) in the NGOM of 454,152 lb (206,000 kg) for fishing year 2024. This action deducts 25,000 lb (11,340 kg) of scallops annually for 2024 and 2025 from the NGOM TAL to increase the overall Scallop RSA to fund scallop research. In addition, this action deducts one percent of the NGOM ABC from the NGOM TAL for fishing years 2024 and 2025 to support the industry-funded observer program to help defray the cost to scallop vessels that carry an observer (table 11).

Framework 38 sets a NGOM Set-Aside of 420,598 lb (190,780 kg) for fishing year 2024 and a default NGOM Set-Aside of 315,449 lb (143,085 kg) for fishing year 2025. Because the NGOM Set-Aside for fishing years 2024 and 2025 is below the 800,000-lb (362,874-kg) trigger, Framework 38 does not allocate any landings to the NGOM APL. Table 11 describes the breakdown of the NGOM TAL for the 2024 and 2025 (default) fishing years.

TABLE 11—NGOM SCALLOP FISHERY LANDING LIMITS FOR FISHING YEAR 2024 AND 2025

Landings limits	2024	2025 [a]
NGOM TAL	454,152 lb (206,000 kg)	346,996 lb (157,395 kg) [b].
1 percent NGOM ABC for Observers	8,554 lb (3,880 kg)	6,548 lb (2,970 kg) [b].
RSA Contribution	25,000 lb (11,340 kg)	25,000 lb (11,340 kg).
NGOM Set-Aside	420,598 lb (190,780 kg)	315,449 lb (143,085 kg).
NGOM APL	(c)	(c).

[a] The landings limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment.
[b] The catch limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2025 that will be based on the 2024 annual scallop surveys.
[c] NGOM APL is set when the NGOM Set-Aside is above 800,000 lb (362,874 kg).

Framework 38 closes the Platts Bank Scallop Rotational Closed Area (table 12) through fishing year 2025. This closure protects a substantial number of small scallops that have not been recruited into the fishery.

TABLE 12—PLATTS BANK SCALLOP ROTATIONAL CLOSED AREA

Point	N latitude	W longitude
PB1	43°13.8′	69°43.8′
PB2	43°13.8′	69°31.2′
PB3	43°5.4′	69°31.2′
PB4	43°5.4′	69°43.8′
PB1	43°13.8′	69°43.8′

5. Scallop Incidental Landings Target TAL. This action implements a 50,000-lb (22,680-kg) scallop incidental landings target TAL for fishing years 2024 and 2025 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action allows vessels participating in RSA projects to harvest RSA compensation from the open area and the Area II Scallop Rotational Area. All vessels are prohibited from harvesting RSA compensation pounds in all other access areas. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing on an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Lastly, Framework 38 prohibits the harvest of RSA from any rotational area under default 2025 measures. At the start of 2025, RSA compensation may only be harvested from open areas. The Council will re-evaluate this default prohibition measure in the action that would set final 2025 specifications.

Regulatory Corrections Under Regional Administrator Authority

This rule includes one revision to address regulatory text that is unnecessary, outdated, and unclear. The revision at § 648.64(f)(2) fixes an error and clarifies that the Northern Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the northern windowpane flounder sub-ACL.

In addition, this rule includes changes to regulatory text in 50 CFR part 648.11 that are required to update the industry-funded observer program to the Pre-Trip Notification System (PTNS). The integration of the scallop notification requirement into the PTNS helps standardize observer operations between fisheries and modernize reporting systems. The PTNS is a mobile-friendly website that is more sophisticated and flexible than the aging interactive voice response technology. The change to the PTNS does not affect determination of scallop coverage rates or the compensation analysis. There are no changes to the requirements vessels must abide by if selected to carry an observer, such as equal accommodations, a harassment-free environment, and other safety requirements. These revisions will be made at § 648.11(k)(1) through (4).

These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to the Atlantic Sea Scallop FMP are carried out in accordance with the Atlantic Sea Scallop FMP and the Magnuson-Stevens Act.

Comments and Responses

We received seven comments on the proposed rule during the public comment period; three individuals and the Maine Coast Fishermen's Association commented in support of the action; two individuals commented against more general aspects of fishing and fisheries management; one individual commented that Framework 38 was pointless without the total eradication of offshore wind.

Comment 1: Several commenters commented in support of Framework 38 and recommended the continued management of Atlantic sea scallops.

Response: NMFS appreciates the comment.

Comment 2: Two individuals encouraged NMFS to consider more stakeholder input and actively engage with the fishing community throughout the implementation of Framework 38.

Response: The Council considered public/stakeholder input throughout the development of Framework 38. The Council made adjustments to Framework 38 measures in response to stakeholder input. Specifically, the Council selected alternatives in Framework 38 to allow the LAGC IFQ fleet to fish 2024 access area trips in either Area II, Area I, or the New York Bight. Further, Framework 38 allows

limited access part-time vessels to fish access area trips in either Area II or the New York Bight. These measures were selected provide flexibility to the LAGC IFQ and limited access part-time vessels. NMFS solicits and addresses public comment on all scallop management actions and will continue to do so moving forward.

Comment 3: One individual was opposed to dredging because it allegedly disrupts the ecosystem.

Response: The measures in Framework 38 would have a negligible to slight negative impact on essential fish habitat (EFH). Since the inception of this FMP, a broad suite of measures has been employed to reduce fishing mortality and address habitat impacts. The Council has identified areas to prohibit scallop fishing in order reduce impacts on EFH (for more information, see the Omnibus EFH Amendment 2; 83 FR 15240; April 9, 2018). After a period of very high fishing mortality during the mid-1980's and early-1990's, rotational area management (formalized in Amendment 10 to the Atlantic Sea Scallop FMP (69 FR 35194; June 23, 2004)) has improved meat yields and landings per unit effort, while DAS reductions have curbed overall fishing mortality. Overall, the successful management of the scallop resource has generally reduced fishing effort and mitigated the impacts of scallop dredging on EFH.

Comment 4: One individual thought the measures in Framework 38 were too limiting on industry and, citing the Commerce Clause of the U.S. Constitution, alleged that NOAA lacks expertise to regulate fisheries that affect interstate commerce.

Response: The primary goal of managing the scallop fishery is to maintain long-term sustainable catch levels and the first objective of the Scallop FMP is to prevent overfishing. The Scallop FMP established a fishery specifications process that ensures a consistent review of the Atlantic sea scallop stock status, fishery performance, and other factors to manage by annual catch limits and prevent overfishing. The measures implemented through this action should further achieve the goals/objectives and reduce the possibility of overfishing the Atlantic sea scallop resource, ultimately achieving optimal yield for the fishery. With respect to NOAA's expertise and authority, NOAA has the expertise and rulemaking authority that the commenter alleges it does not have. Congress passed the Magnuson-Stevens Act pursuant to the Commerce Clause of the U.S. Constitution. NOAA administers the Magnuson-Stevens Act as Congress' delegated expert. Congress granted NOAA rulemaking authority under the Magnuson-Stevens Act to issue rules, such as this rule, where there may be an effect on interstate commerce.

Comment 5: One individual commented that Framework 38 was pointless without the total eradication of offshore wind.

Response: This comment is outside the scope of the rule. Nevertheless, NMFS continues to monitor offshore wind development for effects on fisheries and other marine life.

Changes From the Proposed Rule

The proposed rule for Framework 38 incorrectly listed the possession limit for part-time vessels on access area trips as 7,200 lb (3,266 kg) per trip. The correct possession limit is 14,400 lb (6,532 kg) per trip. We corrected this in the preamble and the regulatory revisions at § 648.59(b)(3)(i)(B)(*2*)(*i*). The proposed rule for Framework 38 contained typos in the coordinates for the Area I-Quad Rotational Area and Platts Bank Scallop Rotational Closed Area. We corrected these in the preamble and the regulatory revisions at §§ 648.60(a) and 648.62(e)(2). This final rule removes prohibitions at § 648.14(i)(2)(vi)(B) and (i)(3)(v)(E) and adds a prohibition at § 648.14(i)(1)(vi)(B)(3) to better clarify that a vessel on declared scallop trip is prohibited from entering a Scallop Rotational Area, defined as ''available for continuous transit'' and not continuously transiting through the area, unless it is participating in and complies with the Scallop Access Area Program Requirements.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act and other applicable law. Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is necessary to discharge NMFS' responsibilities and to carry out the Magnuson-Stevens Act.

The Office of Management and Budget has determined that this rule is not significant pursuant to E.O. 12866.

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act.

With the exception of the amendment to § 648.10(c)(1)(ii) (5-minute VMS pings), the Assistant Administrator for Fisheries has determined that the need to implement the measures of this rule in an expedited manner is necessary to achieve conservation objectives for the scallop fishery, windowpane and yellowtail flounder stocks, and to prevent adverse effects to scallop fishery participants. As explained in more detail below, this constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness and to make the final Framework 38 measures effective upon publication in the **Federal Register**. The 2024 fishing year begins on April 1, 2024. The Council adopted Framework 38 to the Atlantic Sea Scallop FMP on December 6, 2023, and submitted a preliminary draft of the framework on December 22, 2023. NMFS has taken all diligent steps to promulgate this rule as quickly as possible. Stakeholder and industry groups have been involved with the development of this action and have participated in relevant public meetings throughout the past year.

If this action is not implemented by April 1, 2024, it would delay positive economic benefits to the scallop fleet, could negatively impact the access area rotation program by delaying fishing in areas that should be available, could adversely affect scallop stocks by delaying harvest when scallop meats are smaller resulting in increased mortality, and would create confusion in the Atlantic sea scallop industry. If Framework 38 is delayed beyond April 1, 2024, certain default measures, including access area designations, DAS, IFQ, RSA, and observer set-aside allocations, would automatically be put into place. Most of these default allocations are set at lower harvest levels than what will be implemented under Framework 38. These default allocations were intentionally set at levels low enough to avoid exceeding the final Framework 38 allocations. Framework 38 increases allocations throughout the fleet. Under default measures, each full-time vessel has 18 DAS and no access area trips. The specification measures in Framework 38 provides full-time vessels with an additional 2 DAS (20 DAS total) and 36,000 lb (16,329 kg) in access area allocations. Framework 38 also opens the New York Bight Access Area allowing the fleet to sustainably fish in the area. Accordingly, this action also prevents more restrictive aspects of the default measures from going into effect,

which would undermine the intent of the rule.

The final rule implementing Framework 38 could not have been issued sooner to allow for a 30-day delayed effectiveness by the April 1, 2024, start of the scallop fishing year. The information underlying the rule was unavailable until shortly before the Council voted on the framework (December 6, 2023). A proposed rule package was diligently forwarded to NMFS on December 22, 2023, and NMFS published a proposed rule on February 12, 2023. Delaying the implementation of this action for 30 days would delay positive economic benefits to the scallop fleet, would negatively impact the access area rotation program by delaying fishing in areas that should be available, and could adversely affect scallop stocks.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has completed a final regulatory flexibility analysis (FRFA) in support of Framework 38, as included below. This FRFA incorporates the IRFA, a summary of the significant issues raised by public comments in response to the IRFA, NMFS' responses to those comments, a summary of the analyses completed in the Framework 38 EA, and the preamble to this final rule. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 38 and in the preambles to the proposed rule and this final rule and are not repeated here. All of the documents that constitute the FRFA (including the preambles of the proposed and final rules) are available from NMFS and/or the Council, and a copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES** section).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

We received no comments specific to the IRFA or on the economic impacts of the rule more generally. See above for responses to comments on the proposed rule.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

These regulations affect all vessels with limited access, LAGC IFQ, and LAGC NGOM scallop permits. Framework 38 (section 5.6) and the LAGC IFQ Performance Evaluation (2017) provide extensive information on the number of vessels that are affected by these regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES** section). There were 307 vessels that held full-time limited access permits in fishing year 2022, including 244 dredge, 53 small-dredge, and 10 scallop trawl permits. In the same year, there were also 27 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits in 2022. In 2019, NMFS reported that there were a total of 300 IFQ-only permits, with 212 issued and 88 in Confirmation of Permit History. Approximately 96 of the IFQ vessels and 78 NGOM vessels actively fished for scallops in fishing year 2022. The remaining IFQ permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Thirty-eight limited access vessels also held LAGC IFQ permits, 52 had NGOM permits, and 102 had incidental permits.

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by this action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated through stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ''ownership entities'' are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ''ownership entity.'' For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ''ownership entity,'' that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ''ownership entity'' for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2022 permits and contains average gross sales associated with those permits for calendar years 2018 through 2022. Matching the potentially impacted 2022 fishing year permits described above (*i.e.,* limited access and LAGC IFQ) to calendar year 2022 ownership data results in 150 distinct ownership entities for the limited access fleet and 77 distinct ownership entities for the LAGC IFQ fleet. Based on the Small Business Administration guidelines, 142 of the limited access distinct ownership entities and 87 LAGC IFQ entities are categorized as small business entities. Eight limited access and none of the LAGC IFQ entities are categorized as large business entities with annual fishing revenues over $11 million in 2022. There were 73 distinct small business entities with NGOM permits in 2022.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This final rule does not require specific action on behalf of regulated entities other than to ensure they stay within the specifications that are set.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

During the development of Framework 38, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. Framework 38 allows the LAGC IFQ fleet to fish 2024 access area trips in either Area II, Area I, or the New York Bight. Further, Framework 38 allows part-time vessels to fish access area trips in either Area II or the New York Bight. This could have potentially slight positive impacts on the resource overall by spreading effort out and providing more access in areas with higher catch rates. It also could potentially reduce total area swept because the LAGC IFQ and part-time components will have the opportunity to fish on high densities of scallops in all open access areas. Alternatives to the measures in this final rule are described in detail in Framework 38, which includes an EA, RIR, and IRFA (see **ADDRESSES** section). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Specifically, catch limits

must be derived using SSC-approved scientific calculations based on the Scallop FMP. Moreover, the limited number of alternatives available for this action must also be evaluated in the context of an ever-changing FMP, as the Council has considered numerous alternatives to mitigating measures every fishing year in amendments and frameworks since the establishment of the FMP in 1982.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize optimal yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule and will designate such publications as ''small entity compliance guides.'' The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a bulletin to permit holders that also serves as a small entity compliance guide was prepared. This final rule and the guide (*i.e.,* bulletin) will be sent via email to the Greater Atlantic Regional Fisheries Office scallop email list and are available on the website at: *https://www.fisheries.noaa.gov/action/framework-adjustment-38-atlantic-sea-scallop-fishery-management-plan.* Hard copies of the guide and this final rule will be available upon request (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 14, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

Subpart A—General Provisions

■ 2. In § 648.2, add the definition, in alphabetical order, of ''Continuous transit or transit'' to read as follows:

§ 648.2 Definitions.

* * * * *

Continuous transit or transit, with respect to the Atlantic Sea Scallop Fishery, means that a vessel has fishing gear stowed and not available for immediate use, as described in this section, and travels through an area with a direct heading, consistent with navigational safety, while maintaining expeditious headway throughout the transit without loitering or delay.

* * * * *

■ 3. In § 648.10, revise paragraph (c)(1)(ii) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(c) * * *

(1) * * *

(ii) For vessels issued a Federal scallop permit and equipped with a VMS unit, at least once every 30 minutes, 24 hours a day, throughout the year, when not on a declared federal scallop trip or when shoreward of the VMS Demarcation Line. With the exception of vessels on a declared state waters exemption trip, all vessels issued a Federal scallop permit and equipped with a VMS unit shall be polled at a minimum of once every 5 minutes when on a declared federal scallop trip and seaward of the VMS Demarcation Line.

* * * * *

■ 4. In § 648.11, revise paragraphs (k)(1) through (k)(3), and (k)(4)(i) to read as follows:

§ 648.11 Monitoring coverage.

* * * * *

(k) * * *

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access, LAGC IFQ, and LAGC NGOM permits are required to comply with the additional notification requirements specified in paragraph (k)(2) of this section. When NMFS informs the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area, Open Area, or NGOM as specified in paragraph (k)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip without an observer if the vessel owner, operator, and/or manager has been informed that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (k)(3) of this section.

(2) *Vessel notification procedures.* Scallop limited access, LAGC IFQ, and LAGC NGOM vessel owners, operators, or managers shall notify NMFS via a Pre-Trip Notification System (PTNS) at least 48 hours, but not more than 10 days, prior to the beginning of any federal scallop trip of all requested stratification information (*e.g.,* permit category, access area/area to be fished, gear, and EFP participation) and deployment details (*e.g.,* sail date, sail time, port of departure, estimated trip duration).

(3) *Selection of scallop trips for observer coverage.* Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall inform the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified scallop trip, at least 24 hours prior to the PTNS sail time of that trip notification. All assignments and waivers of observer coverage shall be issued to the vessel. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was submitted to NMFS. PTNS notifications that are canceled are not considered active notifications, and a vessel may not sail on a federal scallop trip on a canceled notification.

(4) * * *

(i) An owner of a scallop vessel required to carry an observer under paragraph (k)(3) of this section must carry an observer that has passed a NMFS-certified Observer Training class certified by NMFS from an observer service provider approved by NMFS under paragraph (h) of this section. The PTNS will offer selected trips to approved observer service providers in a manner that will take into account the vessels' provider preferences, but final outcomes will be dependent on the observer availability of each provider. The PTNS will inform the owner, operator, or vessel manager of a trip's selection outcome between 48 and 24 hours prior to the PTNS sail time. The PTNS will specify the trip's outcome

(*i.e.,* selection to carry an observer or a waiver), as well as which provider has been assigned to provide any required coverage along with their contact information. Vessels shall communicate trip details with the assigned observer provider company within a reasonable timeframe after the provider has been assigned. A list of approved observer service providers shall be posted on the NMFS/FSB website: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.* Observers are not required to be available earlier than the PTNS sail time for that trip notification. Unless otherwise determined by the Regional Administrator or their delegate, if an observer is not available for a trip, providers will indicate as such in the PTNS, and the trip will be waived of the coverage requirement, as appropriate. Upon initial selection, providers will indicate their availability to cover a trip between 48 and 24 hours prior to the PTNS sail time for that trip notification, however extenuating circumstances impacting the observer's availability (*e.g.,* illness or transportation issues) may result in a waiver within 24 hours of the vessel's sail time. A vessel of any eligible permit type may not begin a selected trip without the assigned observer unless having been issued a waiver.

* * * * *

■ 5. Amend § 648.14 by:

■ a. Revising paragraphs (i)(1)(vi)(B)(*1*) and (*2*);

■ b. Adding paragraphs (i)(1)(vi)(B)(*3*) and (i)(1)(vi)(C);

■ c. Removing and reserving paragraphs (i)(2)(vi)(B) and (i)(3)(v)(E).

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(vi) * * *

(B) * * *

(*1*) Fish for, possess, or land scallops in or from a Scallop Rotational Area unless it is participating in and complies with the requirements of the Scallop Access Area program defined in § 648.59(b) through (g).

(*2*) Enter or transit Scallop Rotational Areas on a declared federal scallop trip, as described in § 648.59(a)(1), unless the Scallop Rotational Area has been defined as ''available for continuous transit'' as provided by § 648.59(a)(2) and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(*3*) Enter a Scallop Rotational Area defined as ''available for continuous transit'', as provided by § 648.59(a)(2), on a declared Federal scallop trip and not continuously transit through the area, unless it is participating in and complies with the Scallop Access Area Program Requirements.

(C) *Western Gulf of Maine Closure Area.*

(*1*) Enter or transit the Western Gulf of Maine Closure Area, as defined in § 648.81(a)(4) on a declared federal scallop trip.

(*2*) [Reserved]

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 6. In § 648.53, revise paragraphs (a)(9) and (b)(3) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(9) *Scallop fishery catch limits.* The following catch limits will be effective for the 2024 and 2025 fishing years:

TABLE 2 TO PARAGRAPH (a)(9)—SCALLOP FISHERY CATCH LIMITS

Catch limits	2024 (mt)	2025 (mt) [a]
OFL	33,406	35,241
ABC/ACL (discards removed)	21,497	22,586
Incidental Landings	23	23
RSA	578	578
Observer Set-Aside	215	226
NGOM Set-Aside	191	143
ACL for fishery	20,490	21,616
Limited Access ACL	19,363	20,427
LAGC Total ACL	1,127	1,189
LAGC IFQ ACL (5 percent of ACL)	1,024	1,081
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	103	109
Limited Access ACT	16,781	17,703
APL (after set-asides removed)	11,609	([a])
Limited Access APL (94.5 percent of APL)	10,971	([a])
Total IFQ Annual Allocation (5.5 percent of APL) [b]	638	479
LAGC IFQ Annual Allocation (5 percent of APL) [b]	580	435
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	58	44

[a] The catch limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2025 that will be based on the 2024 annual scallop surveys. The 2025 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[b] As specified in paragraph (a)(6)(iii)(B) of this section, the 2025 IFQ annual allocations are set at 75 percent of the 2024 IFQ Annual Allocations.

* * * * *

(b) * * *

(3) *DAS allocations.* The DAS allocations for limited access scallop vessels for fishing years 2024 and 2025 are as follows:

TABLE 3 TO PARAGRAPH (b)(3)—SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2024	2025 [a]
Full-Time	20	15
Part-Time	8	6
Occasional	1.67	1.25

[a] The DAS allocations for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. The 2025 DAS allocations are set at 75 percent of the 2024 allocation as a precautionary measure.

* * * * *

■ 7. Amend § 648.59 by:
■ a. Revising paragraph (a);
■ b. Revising paragraphs (b)(3)(i)(B) and (b)(3)(ii)(A)(*1*);
■ c. Removing and reserving paragraph (b)(3)(ii)(B); and
■ d. Revising paragraphs (c), (e)(1) and (2), (f), (g)(1), (g)(3)(v) and (g)(4)(ii).

The revisions read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) The Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in § 648.2. Guidelines for this area rotation program (*i.e.,* when to close an area and reopen it to scallop fishing) are provided in § 648.55(a)(6). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified through the specifications or framework adjustment processes defined in § 648.55. When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Scallop Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in § 648.60, Habitat Management Areas specified in § 648.370, or areas closed to scallop fishing under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

(1) *Prohibition on Entering or Transiting a Scallop Rotational Area.* On a declared scallop trip, a vessel issued any Federal scallop permit may not enter, transit, fish for, possess, or land scallops in or from a Scallop Rotational Area unless it is participating in, and complies with, the Scallop Access Area Program Requirements defined in paragraphs (b) through (g) of this section, or if the vessel is transiting a Scallop Rotational Area defined as ''available for continuous transit'' pursuant to paragraph (a)(2) of this section. On a trip declared out of the federal scallop fishery, a vessel may fish for species other than scallops within the rotational closed areas, provided the vessel does not fish for, catch, possess, or retain scallops or intend to fish for, catch, possess, or retain scallops.

(2) *Transiting a Scallop Rotational Area available for Continuous Transit.* A vessel on a declared scallop trip or possessing scallops may continuously transit, as defined in § 648.2, a Scallop Rotational Area, if that area has been determined available for continuous transit, as specified in paragraph (a)(2)(i) of this section, and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(i) Scallop Rotational Areas Available for Continuous Transit:

(A) Area 1 Scallop Rotational Area, as defined in § 648.60(c);

(B) Area 1 Quad Scallop Rotational Areas, as defined in § 648.60(a).

(ii) [Reserved]

(b) * * *

(3) * * *

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2024 and 2025 fishing years:

(*1*) *Full-time vessels.*

(*i*) For a full-time limited access vessel, the possession limit and allocations are:

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

Rotational access area	Scallop possession limit (per trip)	2024 Scallop allocation	2025 Scallop allocation (default)
Area II	12,000 lb (5,443 kg)	24,000 lb (10,886 kg)	0 lb (0 kg).
New York Bight	12,000 lb (5,443 kg)	12,000 lb (5,443 kg)	0 lb (0 kg).
Total		36,000 lb (16,329 kg)	0 lb (0 kg).

(*ii*) [Reserved]

(*2*) *Part-time vessels.*

(*i*) For a part-time limited access vessel, the possession limit and allocations are as follows:

TABLE 2 TO PARAGRAPH (b)(3)(i)(B)(*2*)(*i*)

Rotational access area	Scallop possession limit (per trip)	2024 Scallop allocation	2025 Scallop allocation (default)
Area II or New York Bight [a]	14,400 lb (6,532 kg)	14,400 lb (6,532 kg)	0 lb (0 kg).
Total		14,400 lb (6,532 kg)	0 lb (0 kg).

[a] Allocation can be fished in either Area II and/or New York Bight Access Areas.

(*ii*) [Reserved]

(*3*) *Occasional limited access vessels.*

(*i*) For the 2024 fishing year only, an occasional limited access vessel is allocated 3,000 lb (1,361 kg) of scallops with a trip possession limit at 3,000 lb of scallops per trip (1,361 kg per trip). Occasional limited access vessels may

harvest the 3,000 lb (1,361 kg) allocation from Area II or New York Bight Access Areas.

(*ii*) For the 2025 fishing year, occasional limited access vessels are not allocated scallops in any rotational access area.

(ii) * * *

(A) * * *

(*1*) The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only in 6,000 lb (2,722 kg) increments. For example, a full-time vessel may exchange 12,000 lb (5,443 kg) from one access area for 12,000 lb (5,443 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 12,000 lb (5,443 kg) from one access area for 12,000 lb (5,443 kg) allocated to another full-time vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category (*i.e.,* a full-time vessel may not exchange allocations with a part-time vessel, and vice versa). Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations in 6,000 lb (2,722 kg) increments between two or more vessels of the same permit category under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Area II Access Area at the end of fishing year 2023, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Area II Access Area is open in fishing year 2024 (April 1, 2024, through May 30, 2024).

* * * * *

(e) * * *

(1) *2024.* Area II Scallop Rotational Area.

(2) *2025.* No access areas.

(f) *VMS polling.* All vessels issued a Federal scallop permit and equipped with a VMS unit shall be polled at a minimum of once every 30 minutes when not on a declared federal scallop trip or when shoreward of the VMS Demarcation Line. With the exception of vessels on a declared state waters exemption trip, all vessels issued a Federal scallop permit and equipped with a VMS unit shall be polled at a minimum of once every 5 minutes when on a declared federal scallop trip and seaward of the VMS Demarcation Line. Vessel owners shall be responsible for paying the costs of VMS polling.

(g) * * *

(1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section, subject to any additional restrictions specified in § 648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in § 648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1) through (2), (b)(6) through (9), and (d) through (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Area II, Area I, and New York Bight Scallop Rotational Areas specified in § 648.60, when open, provided the vessel complies with the requirements specified in § 648.59 and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

* * * * *

(3) * * *

(v) *LAGC IFQ access area allocations.* The following LAGC IFQ access area trip allocations will be effective for the 2024 and 2025 fishing years:

TABLE 3 TO PARAGRAPH (g)(3)(v)

Scallop access area	2024	2025 [a]
Area I/Area II/New York Bight [b]	856	0
Total	856	0

[a] The LAGC IFQ access area trip allocations for the 2025 fishing year are subject to change through a future specifications action or framework adjustment.

[b] LAGC Access Area trips can be taken in any of the available areas until Regional Administrator determines that the total number of LAGC IFQ trips have been or are projected to be taken.

(4) * * *

(ii) *Other species.* Unless issued an LAGC IFQ scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Area II or Area I Scallop Rotational Areas specified in § 648.60 is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

* * * * *

■ 8. Amend § 648.60 by:

■ a. Adding paragraph (a);

■ b. Revising paragraphs (b)(1) and (c);

■ c. Adding paragraph (d);

■ d. Revising paragraph (g);

■ e. Removing and reserving paragraph (i);
■ f. Revising paragraph (j); and
■ g. Removing paragraph (k).

The additions and revisions read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(6) *Area I-Quad Scallop Rotational Area.* The Area 1-Quad Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 1 TO PARAGRAPH (a)

Point	N latitude	W longitude
AIQ1	40°55.2′	68°53.4′
AIQ2	41°0.6′	68°58.2′
AIQ3	41°3.0′	68°52.2′
AIQ4	40°55.8′	68°46.8′
AIQ1	40°55.2′	68°53.4′

(b) * * *

(1) *Area II Scallop Rotational Area boundary.* The Area II Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (b)(1)

Point	N latitude	W longitude	Note
AII1	41°30′	67°20′	
AII2	41°30′	[a]	[b]
AII3	40°40′	[c]	[b]
AII4	40°40′	67°20′	
AII1	41°30′	67°20′	

[a] The intersection of lat. 41°30′ N and the United States-Canada Maritime Boundary, approximately lat. 41°30′ N, long. 66°34.73′ W.
[b] From Point AII2 connected to Point AII3 along the United States-Canada Maritime Boundary.
[c] The intersection of lat. 40°40′ N and the United States-Canada Maritime Boundary, approximately lat. 40°40′ N and long. 65°52.61′ W.

* * * * *

(c) *Area I Scallop Rotational Area.* The Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 3 TO PARAGRAPH (c)

Point	N latitude	W longitude
AIA1	40°58.2′	68°30′
AIA2	40°55.8′	68°46.8′
AIA3	41°3.0′	68°52.2′
AIA4	41°0.6′	68°58.2′
AIA5	41°4.2′	69°1.2′
AIA6	41°25.8′	68°30′
AIA1	40°58.2′	68°30′

(6) *Area 1-Sliver Scallop Rotational Area.* The Area 1-Sliver Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 4 TO PARAGRAPH (d)

Point	N latitude	W longitude
AIS1	41°0.0′	68°30.0′
AIS2	41°25.8′	68°30.0′
AIS3	41°4.2′	69°1.2′
AIS4	41°30.0′	69°22.8′
AIS1	41°30.0′	68°30.0′

* * * * *

(g) *Nantucket Lightship Scallop Rotational Area.* The Nantucket Lightship Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 5 TO PARAGRAPH (g)

Point	N latitude	W longitude
NLS1 ...	40°49.8′	69°0.0′
NLS2 ...	40°49.8′	69°30.0′
NLS3 ...	40°43.2′	69°30.0′
NLS4 ...	40°43.2′	70°19.8′
NLS5 ...	40°26.4′	70°19.8′
NLS6 ...	40°19.8′	70°0.0′
NLS7 ...	40°19.8′	68°48.0′
NLS8 ...	40°33.0′	68°48.0′
NLS9 ...	40°33.0′	69°0.0′
NLS1 ...	40°49.8′	69°0.0′

* * * * *

(j) *New York Bight Scallop Rotational Area.* The New York Bight Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 6 TO PARAGRAPH (j)

Point	N latitude	W longitude
NYB1 ..	40°00′	73°20′
NYB2 ..	40°00′	72°30′
NYB3 ..	39°20′	72°30′
NYB4 ..	39°20′	73°20′
NYB1 ..	40°00′	73°20′

■ 9. In § 648.62, revise paragraph (b)(1) and add paragraph (e) to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(b) * * *

(1) The following landings limits will be effective for the NGOM for the 2024 and 2025 fishing years.

TABLE 1 TO PARAGRAPH (b)(1)

Landings limits	2024	2025 [a]
NGOM TAL	454,152 lb (206,000 kg)	346,996 lb (157,395 kg) [b].
1 percent NGOM ABC for Observers	8,554 lb (3,880 kg)	6,548 lb (2,970 kg) [b].
RSA Contribution	25,000 lb (11,340 kg)	25,000 lb (11,340 kg).
NGOM Set-Aside	420,598 lb (190,780 kg)	315,449 lb (143,085 kg).

TABLE 1 TO PARAGRAPH (b)(1)—Continued

Landings limits	2024	2025 [a]
NGOM APL	[c]	[c].

[a] The landings limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment.
[b] The catch limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2025 that will be based on the 2024 annual scallop surveys.
[c] NGOM APL is set when the NGOM Set-Aside is above 800,000 lb (362,874 kg).

* * * * *

(e) *Platts Bank Scallop Rotational Closed Area.*

(1) For fishing years 2024 and 2025, a vessel issued a Federal scallop permit on a declared scallop trip may not enter, transit, fish for, possess, or land scallops in or from the Platts Bank Scallop Rotational Closed Area.

(2) The Platts Bank Scallop Rotational Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (e)(2)

Point	N latitude	W longitude
PB1	43°13.8′	69°43.8′
PB2	43°13.8′	69°31.2′
PB3	43°5.4′	69°31.2′
PB4	43°5.4′	69°43.8′
PB1	43°13.8′	69°43.8′

■ 10. In § 648.64, revise paragraph (f)(2) to read as follows:

§ 648.64 Flounder Stock sub-ACLs and AMs for the scallop fishery.

* * * * *

(f) * * *

(2) The Northern Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the northern windowpane flounder sub-ACL, as follows:

TABLE 4 TO PARAGRAPH (f)(2): NORTHERN WINDOWPANE FLOUNDER GEAR RESTRICTED AREA ACCOUNTABILITY MEASURE DURATION

Percent overage of sub-ACL	Duration of gear restriction
20 or less	November 15 through December 31.
Greater than 20	April through March (year-round).

* * * * *

[FR Doc. 2024–05782 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 57
Friday, March 22, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0470; Project Identifier AD–2023–00694–A]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. (Type Certificate Previously Held by Cessna Aircraft Company) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Textron Aviation Inc. (Textron) (type certificate previously held by Cessna Aircraft Company) Model 525, 525A, and 525B airplanes with Tamarack active technology load alleviation system (ATLAS) winglets installed per Supplemental Type Certificate (STC) No. SA03842NY. This proposed AD was prompted by a report of an un-annunciated failure of the ATLAS system. This proposed AD would require installing placards on the left-hand inboard edge of the Tamarack active camber surface (TACS) and revising the existing airplane flight manual (AFM) for your airplane. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 6, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0470; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material identified in this NPRM, contact Tamarack Aerospace Group, Inc., 2021 Industrial Drive, Sandpoint, ID 83864; phone: (208) 597–4568; website: *tamarackaero.com/customer-support.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Anthony Caldejon, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (206) 231–3534; email: *anthony.v.caldejon@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0470; Project Identifier AD–2023–00694–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Anthony Caldejon, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712. 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 received a report that, while accomplishing a reliability improvement program, Tamarack discovered the potential for a failure of the ATLAS system in which a loss of load alleviation would be un-annunciated. The manufacturer's investigation revealed that failure of either of one of a pair of opto-isolators within the ATLAS Control Unit (ACU) can prevent an enable signal from being sent to the TACS Control Units (TCUs).

The ATLAS system is installed on Textron Model 525, 525A, and 525B airplanes under STC No. SA03842NY and lessens the increased wing loads associated with the installation of winglets. The ATLAS is designed to detect flight conditions and modify airflow at the wing tip accordingly. The ATLAS will draw power constantly to operate the logic circuit and provide power to the actuators to maintain TACS position.

The TCUs include the linear electric actuators and motor controllers that move the TACS. Since the enable signals are not monitored after the opto-isolators, the ACU cannot detect whether the generated signal is reaching the TCUs. The TCUs rely on the enable signal to determine whether to respond

to commands from the ACU. If one of the opto-isolators fails, the ACU would not be able to detect that the TCUs were not enabled and the TCUs would not respond to commands from the ACU. Thus, the system would be operating in a mode of un-annunciated loss of load alleviation. The flight crew would be unaware of a malfunction of the load alleviation function of ATLAS and could fly the airplane into conditions that exceed the limit load. In addition, fatigue concerns could result in cracking of the airplane's primary structure. If not addressed, this condition could result in loss of continued safe flight and landing of the airplane.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Tamarack Aerospace Service Bulletin SBATLAS–57–06, Issue A, dated April 19, 2023. This service information specifies procedures for installing placards on the left-hand inboard edge of the TACS to enhance visibility of TACS movement during night operations.

The FAA also reviewed the following AFM supplements, which contain, among other items, instructions for pre-flight checks of the ATLAS system before taxi. These documents are distinct because they apply to different airplane models.

- Tamarack Aerospace Cessna Citation Model 525, 525–0001 thru –0359, AFM Supplement TAG–1101–0099 CA/DD/M023, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
- Tamarack Aerospace Cessna Citation Model 525, 525–0360 through –0599, AFM Supplement TAG–1101–1099 CA/DD/M037, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
- Tamarack Aerospace Cessna Citation Model 525, 525–0600 through –0684 and –0686 through –0701, AFM Supplement TAG–1101–1099 CA/DD/M038, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
- Tamarack Aerospace Cessna Citation Model 525, 525–0685 and –0800 and on, AFM Supplement TAG–1101–M099 CA/DD/M088, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, September 20, 2023.
- Tamarack Aerospace Cessna Citation Model 525A, 525A–0001 thru –0299, AFM Supplement TAG–1102–0099 CAS/AFM0003, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.
- Tamarack Aerospace Cessna Citation Model 525A, 525A–0300 and on, AFM Supplement TAG–1102–P099 CAS/AFM0004, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.
- Tamarack Aerospace Cessna CitationJet Model 525B, 525B–0001 thru 525B–0056 and 525B–0058 thru 525B–0450, AFM Supplement TAG–1103–0099 CAS/AFM0001, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.
- Tamarack Aerospace Cessna CitationJet Model 525B, 525B–0057 and 525B–0451 and on, AFM Supplement TAG–1103–P099 CAS/AFM0002, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, September 20, 2023.

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

Proposed AD Requirements in This NPRM

This proposed AD would require installing placards on the left-hand inboard edge of the TACS and revising the existing AFM for your airplane. Revising the AFM for your airplane by updating the Normal Procedures section may be performed by the owner/operator (pilot) holding at least a private pilot certificate may revise the AFM for your airplane and must enter compliance with the applicable paragraph of this proposed AD into the airplane maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The pilot may perform this action because it only involves revising the flight manual. This action could be performed equally well by a pilot or mechanic. This is an exception to the FAA's standard maintenance regulations.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 148 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install placards	0.50 work-hour × $85.00 per hour = $42.50	$20	$62.50	$9,250
Revise AFM	1 work-hour × $85 per hour = $85	0	85	12,580

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Textron Aviation Inc. (Type Certificate Previously Held by Cessna Aircraft Company): Docket No. FAA–2024–0470; Project Identifier AD–2023–00694–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 6, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) Model 525, 525A, and 525B airplanes, all serial numbers (S/Ns), certificated in any category, with Tamarack active technology load alleviation system (ATLAS) winglets installed in accordance with Supplemental Type Certificate No. SA03842NY.

(d) Subject

Joint Aircraft System Component (JASC) Code 2770, Gust Lock/Damper System.

(e) Unsafe Condition

This AD was prompted by a report of an un-annunciated failure of the ATLAS system. The FAA is issuing this AD to address un-annunciated loss of load alleviation which, if not addressed, could lead to the flight crew flying the airplane into conditions that exceed the limit load, as well as fatigue cracking in the airplane's primary structure. This could result in loss of continued safe flight and landing of the airplane.

(f) Compliance

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

(g) Required Actions

Within 60 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first, do the actions required by paragraphs (g)(1) and (2) of this AD.

(1) Install placards on the left-hand Tamarack active camber surface (TACS) in accordance with steps 1 through 3 of the Accomplishment Instructions in Tamarack Aerospace Service Bulletin SBATLAS–57–06, Issue A, dated April 19, 2023.

(2) Revise the Normal Procedures section of the existing airplane flight manual (AFM) for your airplane by adding the information in Figure 1 to paragraph (g)(2) of this AD under ''Before Taxi'' or by incorporating the AFM supplement applicable to your airplane identified in Figure 2 to paragraph (g)(2) of this AD. Using a different document with information identical to this information under ''Before Taxi'' in the AFM for your airplane is acceptable for compliance with the requirements of this paragraph. The owner/operator (pilot) holding at least a private pilot certificate may revise the existing AFM for your airplane and must enter compliance with the applicable paragraph of this AD into the airplane maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

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Figure 1 to Paragraph (g)(2)—ATLAS Check Procedure

Before Taxi

WARNING

The TACS should move rapidly and forcefully trailing edge up and return to the neutral position when the ATLAS first receives power. Be sure that all personnel and equipment are clear before moving switch to the ON position.

ATLAS System .....CHECK
(Test that the ATLAS is working properly.)

a. In poor light or dark conditions, turn on left side reading light.
b. In poor light or dark conditions, turn on Wing Inspection Light.
c. ATLAS INOP Button – Press 3 times within 3 seconds. ATLAS INOP Button light will flash 3 times when system goes through BIT (Built In Test).

WARNING

The TACS should move rapidly and forcefully trailing edge up and return to the neutral position when running the BIT function. Be sure that all personnel and equipment are clear before pressing.

d. TACS.....CHECK MOVEMENT
Both TACS should rapidly move up and return to the neutral position.
i. **If the TACS do not move** after completing step c., this may indicate that ATLAS is not functioning normally.
ii. Refer to Abnormal Procedure ATLAS INOPERATIVE ON THE GROUND (TACS DO NOT MOVE IN BIT).
e. Wait approximately 10 seconds.
f. ATLAS INOP Button light.....CHECK OFF
g. If left side reading light is illuminated, turn off at pilot's discretion.
h. If Wing Inspection Light is illuminated, turn off at pilot's discretion.

NOTE

If annunciator remains illuminated, or if the TACS do not move, a fault has been identified in the system. In either case refer to Abnormal Procedures ATLAS INOPERATIVE ON THE GROUND.

Figure 2 to Paragraph (g)(2)—Tamarack ATLAS AFM Supplements

Model and S/N	Tamarack ATLAS AFM Supplement
Model 525, S/Ns 525-0001 through 525-0359 inclusive	Paragraph 3A, ATLAS System, under "Before Taxiing" in the Normal Procedures section of Cessna Citation Model 525 AFM Supplement TAG-1101-0099 CA/DD/M023, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023
Model 525, S/Ns 525-0360 through 525-0599 inclusive	Paragraph 3A, ATLAS System, under "Before Taxi" in the Normal Procedures section of Cessna Citation Model 525 AFM Supplement TAG-1101-1099 CA/DD/M037, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023
Model 525, S/Ns 525-0600 through 525-0684 inclusive and S/Ns 525-0686 through 525-0701 inclusive	Paragraph 1A, ATLAS System, under "Before Taxi" in the Normal Procedures section of Cessna Citation Model 525 AFM Supplement TAG-1101-P099 CA/DD/M038, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023
Model 525, S/N 525-0685 and S/Ns 525-0800 and larger	Paragraph 9A, ATLAS System, under "Before Taxi" in the Normal Procedures section of Cessna Citation Model 525 AFM Supplement TAG-1101-M099 CA/DD/M088, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023
Model 525A, S/Ns 525A-0001 through 525-0299 inclusive	Paragraph 3A, ATLAS System, under "Before Taxi" in the Normal Procedures section of Cessna Citation Model 525A AFM Supplement TAG-1102-0099 CAS/AFM0003, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, dated September 20, 2023
Model 525A, S/Ns 525A-0300 and larger	Paragraph 1A, ATLAS System, under "Before Taxi" in the Normal Procedures section of Cessna Citation Model 525A

	AFM Supplement TAG-1102-P099 CAS/AFM0004, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, dated September 20, 2023
Model 525B, S/Ns 525B-0001 through 525B-0056 inclusive and S/Ns 525B-0058 through 525B-0450 inclusive	Paragraph 1A, ATLAS System, under "Before Taxi" in the Normal Procedures section of Cessna CitationJet Model 525B AFM Supplement TAG-1103-0099 CAS/AFM0001, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, dated September 20, 2023
Model 525B, S/N 525B-0057 and S/Ns 525B-0451 and larger	Paragraph 9A, ATLAS System, under "Before Taxi" in the Normal Procedures section of Cessna CitationJet Model 525B AFM Supplement TAG-1103-P099 CAS/AFM0002, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023

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(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, West Certification 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 West Certification Branch, send it to the attention of the person identified in paragraph (i) of this AD and email it to *9-ANM-Seattle-ACO-AMOC-Requests@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

For more information about this AD, contact Anthony Caldejon, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (206) 231–3534; email: *anthony.v.caldejon@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Tamarack Aerospace Cessna Citation Model 525, 525–0001 thru –0359, Airplane Flight Manual (AFM) Supplement TAG–1101–0099 CA/DD/M023, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.

(ii) Tamarack Aerospace Cessna Citation Model 525, 525–0360 thru –0599, AFM Supplement TAG–1101–1099 CA/DD/M037, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.

(iii) Tamarack Aerospace Cessna Citation Model 525, 525–0600 through –0684 and –0686 through –0701, AFM Supplement TAG–1101–1099 CA/DD/M038, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.

(iv) Tamarack Aerospace Cessna Citation Model 525, 525–0685 and –0800 and on, AFM Supplement TAG–1101–M099 CA/DD/M088, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, September 20, 2023.

(v) Tamarack Aerospace Cessna Citation Model 525A, 525A–0001 thru –0299, AFM Supplement TAG–1102–0099 CAS/AFM0003, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

(vi) Tamarack Aerospace Cessna Citation Model 525A, 525A–0300 and on, AFM Supplement TAG–1102–P099 CAS/AFM0004, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

(vii) Tamarack Aerospace Cessna CitationJet Model 525B, 525B–0001 thru 525B–0056 and 525B–0058 thru 525B–0450, AFM Supplement TAG–1103–0099 CAS/AFM0001, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

(viii) Tamarack Aerospace Cessna CitationJet Model 525B, 525B–0057 and 525B–0451 and on, AFM Supplement TAG–1103–P099 CAS/AFM0002, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, September 20, 2023.

(ix) Tamarack Aerospace Service Bulletin SBATLAS–57–06, Issue A, dated April 19, 2023.

(3) For service information identified in this AD, contact Tamarack Aerospace Group, Inc., 2021 Industrial Drive, Sandpoint, ID 83864; phone: (208) 597–4568; website: *tamarackaero.com/customer-support.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on March 11, 2024.

Victor Wicklund,

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

[FR Doc. 2024–05477 Filed 3–21–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0471; Project Identifier MCAI–2023–01213–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R Variant F, F4–605R, and F4–622R airplanes, Model A310 series airplanes, Model A318, A319, A320, and A321-series airplanes, Model A330–200, –200 Freighter, and –300 series airplanes, Model A330–841 and –941 airplanes, and Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes. This proposed AD was prompted by reported occurrences of chemical oxygen generators failing to activate in service and during maintenance activities. This proposed AD would require replacing affected oxygen generators, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 6, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0471; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu; website easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–0471.
- 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.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0471; Project Identifier MCAI–2023–01213–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0209, dated November 22, 2023 (EASA AD 2023–0209) (also referred to as the MCAI), to correct an unsafe condition for all Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–620, C4–605R Variant F, F4–605R and F4–622R airplanes, Model 300 F4–608ST airplanes, Model A310–203, –203C, –204, –221, –222, –304, –308, –322, –324, and –325 airplanes, Model A318–111, –112, –121, and –122 airplanes, Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes, Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes, Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes, Model A330–201, –202, –203, –223, –243, –223F, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –743L, –841, and –941 airplanes, and Model A340–211, –212, –213, 311, –312, –313, –541, –542, –642, and –643 airplanes. Model A300 F4–608ST, A300 C4–620, A310–203C, A310–308, A320–215, A330–743L, A340–542, and A340–643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states occurrences were reported of chemical oxygen generators failing to

activate in service and during maintenance activities. Subsequent investigations identified poor reactivity of the start powder used inside the oxygen generator. This condition, if not corrected, could lead to a reduction of the available oxygen capacity of the airplane, possibly resulting in injury to the airplane occupants.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2024–0471.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0209 specifies procedures for replacing affected oxygen generators, which includes reporting and returning affected parts to the manufacturer. EASA AD 2023–0209 also prohibits the installation of affected parts. 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 **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0209 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use 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, the FAA proposes to incorporate EASA AD 2023–0209 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0209 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0209 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 2023–0209. Service information required by EASA AD 2023–0209 for compliance will be available at regulations.gov under Docket No. FAA–2024–0471 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,975 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	1 work-hour × $85 per hour = $85	$500	$585	$585 per oxygen generator.*
Return of parts	5 work-hours × $85 per hour = $425	0	425	$425 per oxygen generator.*
Reporting	1 work-hour × $85 per hour = $85	0	85	$167,875.

* Based upon various airplane sizes and configurations there could, on average, be 30 affected generators per airplane.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2024–0471; Project Identifier MCAI–2023–01213–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 6, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (8) of this AD.

(1) Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R Variant F, F4–605R, and F4–622R airplanes.

(2) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(3) Model A318–111, –112, –121, and –122 airplanes.

(4) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(5) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(6) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(7) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes.

(8) Model A340–211, –212, –213, 311, –312, –313, –541, and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by reported occurrences of chemical oxygen generators failing to activate in service and during maintenance activities. The FAA is issuing this AD to address poor reactivity of the start powder used inside the affected oxygen generators. The unsafe condition, if not addressed, could lead to a reduction of the available oxygen capacity of the airplane and could result in injury to airplane occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0209, dated November 22, 2023 (EASA AD 2023–0209).

(h) Exceptions to EASA AD 2023–0209

(1) Where EASA AD 2023–0209 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2023–0209 specifies ''in accordance with the instructions of the AOT,'' this AD requires replacing that text with ''in accordance with paragraph 5.6 of the AOT.''

(3) The service information referenced in EASA AD 2023–0209 specifies to report inspection results to Airbus and return affected oxygen generators to Collins Aerospace. For this AD, report inspection results and return affected oxygen generators at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the affected oxygen generator was replaced on or after the effective date of this AD: Submit the report and return the affected oxygen generator within 40 days after the replacement.

(ii) If the affected oxygen generator was replaced before the effective date of this AD: Submit the report and return the affected oxygen generator within 40 days after the effective date of this AD.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0209.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (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, 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 referenced in EASA AD 2023–0209 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 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 2023–0209, dated November 22, 2023.

(ii) [Reserved]

(3) EASA AD 2023–0209, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on March 12, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06083 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0876; Project Identifier AD–2021–00999–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) that proposed to adopt a new airworthiness directive (AD) that would have applied to certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. The NPRM was prompted by a report indicating that during regular pre-flight checks, multiple door assist handles failed by pulling loose from their lower attachment point in the doorway support bracket. The NPRM would have required, depending on airplane configuration, inspecting the forward and aft door assist handles for correct installation, installing a new retainer above the lower keyway of the support bracket assembly at certain locations, installing a placard on certain support bracket assemblies, re-identifying the support bracket assembly, and replacing the upper spring clip. Since issuance of the NPRM, the FAA has determined that the intended corrective actions do not address the unsafe condition. Accordingly, the NPRM is withdrawn.

DATES: As of March 22, 2024, the proposed rule, which was published in the **Federal Register** on September 22, 2022 (87 FR 57850), is withdrawn.

ADDRESSES: *AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. +FAA–2022–0876; 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 action, any comments received, and other information. The street address for Docket Operations is Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Brandon Lucero, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *Brandon.Lucero@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued an NPRM that proposed to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. The NPRM was published in the **Federal Register** on September 22, 2022 (87 FR 57850). The NPRM was prompted by a report that during regular pre-flight checks, multiple door assist handles failed by pulling loose from their lower attachment point in the doorway support bracket. The NPRM proposed to require, depending on airplane configuration, inspecting the forward and aft door assist handles for correct installation, installing a new retainer above the lower keyway of the support bracket assembly at certain locations, installing a placard on certain support bracket assemblies, reidentifying the support bracket assembly, and replacing the upper spring clip.

The proposed actions were intended to address loose or detached door assist handles, which could result in injury to passengers, crew, or maintenance personnel due to falling out of the airplane when opening the door, and could limit exit from the airplane during a time-limited emergency evacuation.

Actions Since the NPRM Was Issued

Since issuance of the NPRM, the FAA has determined that the proposed corrective actions do not mitigate the unsafe condition. The FAA continues to work with Boeing to develop an acceptable corrective action and corresponding service information, and is considering further rulemaking to address the identified unsafe condition.

Withdrawal of the NPRM constitutes only such action and does not preclude the FAA from further rulemaking on this issue, nor does it commit the FAA to any course of action in the future.

Comments

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

The FAA received additional comments from Avianca Airlines and United Airlines. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Change the Air Transport Association (ATA) of America Code

Avianca Airlines requested that paragraph (d), Subject, of the proposed AD be changed to ''Code 25, Equipment and furnishings.'' Avianca Airlines suggested the proposed AD should be consistent with the ATA chapter as classified by the service information. Boeing Requirements Bulletin B787–81205–SB250253–00 RB, Issue 001, dated June 18, 2021; and Boeing Requirements Bulletin B787–81205–SB250254–00 RB, Issue 001, dated February 22, 2021; are under the scope of ATA 25.

The FAA agrees with the change requested by the commenter, but because the FAA is withdrawing the NPRM, the request is no longer necessary.

Request To Include the Later Revisions for a Safran Service Bulletin

United Airlines Engineering concurred with the work scope and compliance time of the NPRM, but requested that the proposed AD include later revisions of Safran SB C355101–25–02 since it has been revised to Revision 3, dated July 16, 2021. Paragraph (h)(3) of the proposed AD covers only SAFRAN Service Bulletin C355101–25–02, Revision 2, dated February 24, 2021. The commenter requested that paragraph (h)(3) of the proposed AD be changed to ''SAFRAN Service Bulletin C355101–25–02, Revision 2, dated February 24, 2021 or later.''

The FAA acknowledges the comment. However, because the NPRM is being withdrawn, the commenter's request is no longer necessary.

FAA's Conclusions

Upon further consideration, the FAA has determined that the NPRM does not adequately address the identified unsafe condition. Accordingly, the NPRM is withdrawn.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule. This action therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

Accordingly, the notice of proposed rulemaking (Docket No. FAA–2022–0876), which was published in the **Federal Register** on September 22, 2022 (87 FR 57850), is withdrawn.

Issued on March 15, 2024.

Victor Wicklund,

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

[FR Doc. 2024–05913 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0757; Project Identifier MCAI–2023–01205–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–14–10, which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2022–14–10 requires repetitive inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on a certain frame (FR), repetitive inspections for cracking of the fastener holes of the front spar vertical stringers on that frame, and repair if necessary. AD 2022–14–10 provides, for certain airplanes, a modification of the center wing box area that terminates the repetitive inspections under certain conditions. Since the FAA issued AD 2022–14–10, an additional airplane model has been identified that is also subject to the unsafe condition. This proposed AD would continue to require the actions in AD 2022–14–10 and would add Model A321–271N airplanes to the applicability, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 6, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0757; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA AD identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–0757.
- 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.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5102; email *timothy.p.dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0757; Project Identifier MCAI–2023–01205–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5102; email *timothy.p.dowling@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 2022–14–10, Amendment 39–22115 (87 FR 42315, July 15, 2022) (AD 2022–14–10), for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2022–14–10 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0241, dated November 8, 2021 (EASA AD 2021–0241), to correct an unsafe condition. EASA AD 2021–0241 stated that during full-scale certification fatigue testing of the center fuselage, cracks were found on a wing front spar vertical stringer at FR36.

AD 2022–14–10 requires repetitive inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on frame (FR) 36, repetitive inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, and repair if

necessary, and, for certain airplanes, a potential terminating action modification of the center wing box area. The FAA issued AD 2022–14–10 to address fatigue cracking of the front spar vertical stringers on the wings, which, if not corrected, could result in the reduced structural integrity of the airplane.

Actions Since AD 2022–14–10 Was Issued

Since the FAA issued AD 2022–14–10, EASA superseded EASA AD 2021–0241, dated November 8, 2021, and issued EASA AD 2023–0205, dated November 21, 2023 (EASA AD 2023–0205) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, and –271N airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD, therefore, does not include those airplanes in the applicability. The MCAI states that analysis of the full-scale certification fatigue testing findings indicated that Model A321–271N airplanes are also subject to the unsafe condition. Fatigue cracking of the front spar vertical stringers on the wings, if not detected and corrected, could lead to crack propagation, possibly resulting in reduced structural integrity of the airplane.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0757.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2022–14–10, this proposed AD would retain all of the requirements of AD 2022–14–10. Those requirements are referenced in EASA AD 2023–0205, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0205 specifies procedures for repetitive special detailed inspections for cracking of the radius of the front spar vertical stringers, horizontal floor beam radius and fastener holes of the front spear vertical stringers on frame 36, and for installing new fasteners. EASA AD 2023–0205 further describes procedures for repetitive high frequency eddy current (HFEC) inspections for cracking of the horizontal floor beam, repetitive HFEC inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, repetitive rototest inspections of the fastener holes of the spar vertical stringers, and repair. EASA AD 2023–0205 also describes procedures for the modification of the center wing box area. The modification is required for airplanes in configuration 1, 2 or 3; and for airplanes in configuration 5, 6, or 7, the modification is optional and is a terminating action for the repetitive inspections when done within a specified time frame. The modification includes related investigative and corrective actions. Related investigative actions include an HFEC inspection on the radius of the rib flanges, a rototest inspection of the fastener holes, detailed and HFEC inspections for cracking on the cut edges, detailed and rototest inspections on all open fastener holes, and an inspection to determine if secondary structure brackets are installed. Corrective actions include rework of the secondary structure bracket and repair.

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

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2022–14–10. This proposed AD would add airplanes to the applicability and require accomplishing the actions specified in EASA AD 2023–0205 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use 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, the FAA proposes to incorporate EASA AD 2023–0205 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0205 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0205 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 2023–0205. Service information required by EASA AD 2023–0205 for compliance will be available at regulations.gov under Docket No. FAA–2024–0757 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,755 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection, per inspection cycle	25 work-hours × $85 per hour = $2,125.	Up to $100	Up to $2,225	Up to $3,904,875.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 409 work-hours × $85 per hour = $34,765	Up to $66,050	Up to $100,815.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–14–10, Amendment 39–22115 (87 FR 42315, July 15, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–0757; Project Identifier MCAI–2023–01205–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 6, 2024.

(b) Affected ADs

This AD replaces AD 2022–14–10, Amendment 39–22115 (87 FR 42315, July 15, 2022) (AD 2022–14–10).

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0205, dated November 21, 2023 (EASA AD 2023–0205).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, and –271N airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that, during a center fuselage certification full-scale fatigue test, cracks were found on the front spar vertical stringer at a certain frame. This AD was also prompted by a determination that Model A321 airplanes that have incorporated modification 160021 are also subject to the unsafe condition. The FAA is issuing this AD to address fatigue cracking of the front spar vertical stringers on the wings. The unsafe condition, if not addressed, could result in reduced structural integrity 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 2023–0205.

(h) Exceptions to EASA AD 2023–0205

(1) Where EASA AD 2023–0205 refers to ''22 November 2021 [the effective date of EASA AD 2021–0241],'' this AD requires using August 19, 2022 (the effective date of AD 2022–14–10).

(2) Where EASA AD 2023–0205 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0205.

(4) Where paragraph (5) of EASA AD 2023–0205 specifies ''if any crack is found, before next flight, contact Airbus for approved corrective action instructions and accomplish those instructions accordingly,'' this AD requires replacing that text with ''if any crack is found, the crack must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0205 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if

any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5102; email *timothy.p.dowling@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0205, dated November 21, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0205, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on March 15, 2024.

Victor Wicklund,

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

[FR Doc. 2024–05914 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0756; Project Identifier MCAI–2023–00549–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–25–12 and AD 2022–11–11, which apply to certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. AD 2021–25–12 requires repetitive lubrications of the trailing arm of the nose landing gear (NLG). AD 2021–25–12 also requires revising the existing maintenance or inspection program to include new and revised airworthiness limitations. AD 2022–11–11 requires a modification to the NLG shock strut assembly. Since the FAA issued AD 2021–25–12 and AD 2022–11–11, it has been determined that the pivot pin and tow fitting assembly of the NLG must be replaced. This proposed AD would continue to require the actions specified in AD 2021–25–12 and AD 2022–11–11 and would require replacement of the pivot pin and tow fitting assembly with a new, improved pivot pin and tow fitting assembly and prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 6, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0756; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* website *dehavilland.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0756; Project Identifier MCAI–2023–00549–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act

(FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 518–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–25–12, Amendment 39–21856 (86 FR 72174, December 21, 2021) (AD 2021–25–12); and AD 2022–11–11, Amendment 39–22061 (87 FR 33627, June 3, 2022) (AD 2022–11–11), for certain DeHavilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. AD 2021–25–12 and AD 2022–11–11 were prompted by an MCAI originated by Transport Canada, which is the aviation authority for Canada. Transport Canada issued AD CF–2009–29R4, dated October 1, 2021 (Transport Canada AD CF–2009–29R4), to correct an unsafe condition.

AD 2021–25–12 requires repetitive lubrications of the trailing arm of the NLG. AD 2021–25–12 also requires revising the existing maintenance or inspection program to include new and revised airworthiness limitations (life limits for certain bolts). AD 2022–11–11 requires modification to the NLG shock strut assembly. The FAA issued AD 2021–25–12 and AD 2022–11–11 to address failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of an NLG tire during takeoff or landing, which could lead to runway excursions.

Actions Since AD 2021–25–12 and AD 2022–11–11 Were Issued

Since the FAA issued AD 2021–25–12 and AD 2022–11–11, Transport Canada superseded AD CF–2009–29R4, and issued Transport Canada AD CF–2023–22, dated March 30, 2023 (Transport Canada AD CF–2023–22) (referred to after this as the MCAI), to correct an unsafe condition on certain DeHavilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. The MCAI states that it requires the removal of pivot pin part number (P/N) 47127–1 or P/N 47127–3 and tow fitting assembly P/N 47160–1, and their replacement with pivot pin P/N 47127–5 and tow fitting assembly P/N 47160–3, as terminating action to the requirements of AD CF–2009–29R4. The pivot pin P/N 47127–5 is now attached directly to the new tow fitting lug and no longer requires the use of a retention bolt. Transport Canada AD CF–2023–22 also prohibits the installation of certain parts. This proposed AD would also remove airplanes from the applicability of AD 2021–25–12 and AD 2022–11–11. The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0756.

Related Service Information Under 1 CFR Part 51

The FAA reviewed De Havilland Aircraft of Canada Limited Service Bulletin 84–32–173, dated November 15, 2022, including Collins Aerospace Service Bulletin 47100–32–153, dated November 10, 2022. This service information specifies procedures for replacing the pivot pin retention mechanism and tow fitting assembly with a new, improved pivot pin and tow fitting assembly, which consists of removing pivot pin linkage components and replacing pivot pin P/N 47127–1 or P/N 47127–3 and tow fitting assembly P/N 47160–1 with pivot pin P/N 47127–5 and tow fitting assembly P/N 47160–3.

This proposed AD would also require De Havilland Aircraft of Canada Limited Service Bulletin 84–32–161, Revision B, dated March 31, 2021, including UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 3, dated March 26, 2021, which the Director of the Federal Register approved for incorporation by reference as of July 8, 2022 (87 FR 33627, June 3, 2022).

This proposed AD would also require De Havilland Aircraft of Canada Limited Service Bulletin 84–32–167, dated August 12, 2021; and De Havilland Aircraft of Canada Limited Temporary Revision ALI–0223, dated October 15, 2020, which the Director of the Federal Register approved for incorporation by reference as of January 5, 2022 (86 FR 72174, December 21, 2021).

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining that unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would continue to require the actions specified in AD 2021–25–12 and AD 2022–11–11 and would also require accomplishing the actions specified in the service information described previously. This proposed AD would also prohibit the installation of affected parts.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 41 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021-25-12 *	1 work-hour × $85 per hour = $85	Negligible	$85	$3,485
Retained actions from AD 2022–11–11	4 work-hours × $85 per hour = $340	$8	348	14,268
New proposed actions	4 work-hours × $85 per hour = $340	$25,804	26,144	1,071,904

* Table does not include estimated costs for revising the maintenance or inspection program.

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$8	$178

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–25–12, Amendment 39–21856 (86 FR 72174, December 21, 2021); and AD 2022–11–11, Amendment 39–22061 (87 FR 33627, June 3, 2022); and

■ b. Adding the following new AD:

DeHavilland Aircraft of Canada (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2024–0756; Project Identifier MCAI–2023–00549–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 6, 2024.

(b) Affected ADs

This AD replaces AD 2021–25–12, Amendment 39–21856 (86 FR 72174, December 21, 2021) (AD 2021–25–12); and AD 2022–11–11, Amendment 39–22061 (87 FR 33627, June 3, 2022) (AD 2022–11–11).

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (Type Certificate previously held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes, certificated in any category, having serial numbers 4001, and 4003 through 4633 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of a certain bolt at the pivot pin link being found missing or having stress corrosion cracking and a determination that the pivot pin and tow fitting assembly of the nose landing gear (NLG) must be replaced. The FAA is issuing this AD to address failure of the pivot pin retention bolt. The unsafe condition, if not addressed, could result in a loss of directional control or loss of an NLG tire during takeoff or landing, which could lead to runway excursions.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2021–25–12, with no changes. For airplanes with pivot pin retention bolt part number (P/N) NAS6204–14D installed on the NLG assembly: Within 30 days after January 5, 2022 (the effective date of AD 2021–25–12), or within 30 days after installation of pivot pin retention bolt part number P/N NAS6204–14D, whichever occurs later, revise the existing maintenance or inspection program, as applicable, to incorporate the information for Structures Safe Life Task 32–21–01–701 and Task 32–21–01–702, as specified in De Havilland Aircraft of Canada Limited Temporary Revision ALI–0223, dated October 15, 2020. The initial compliance time for doing the tasks is at the applicable time specified in De Havilland Aircraft of Canada Limited Temporary Revision ALI–0223, dated October 15, 2020, or within 30 days after January 5, 2022, whichever occurs later; except, if replacement of bolt P/N NAS6204–14D was performed before January 5, 2022, as specified in De Havilland Aircraft of Canada Service Bulletin 84–32–161, the initial compliance time for Task 32–21–01–702 (bolt P/N NAS6204–14D replacement) is within 3 months after January 5, 2022, or within 800 flight cycles after performing the replacement, whichever occurs later.

(h) Retained No Alternative Actions or Intervals, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2021–25–12, with no changes. After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* replacements) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in

accordance with the procedures specified in paragraph (n)(1) of this AD.

(i) Retained Repetitive Lubrications, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2021–25–12, with no changes. For airplanes with pivot pin retention bolt P/N NAS6204–14D installed on the NLG assembly: Within 30 days or 400 flight cycles, whichever occurs first after January 5, 2022 (the effective date of AD 2021–25–12), and thereafter at intervals not exceeding 400 flight cycles, lubricate the trailing arm of the NLG, including doing a general visual inspection of the NLG pivot pin mechanism for discrepancies (*i.e.,* bolt P/N NAS602–14D is missing or has damage (*e.g.,* stress corrosion or stress corrosion cracking)) and, as applicable, replacing the bolt before further flight, in accordance with paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–167, dated August 12, 2021.

(j) Retained Modification, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2022–11–11, with no changes. For any airplane having an NLG shock strut assembly, part number (P/N) 47100–XX (where XX represents any number), that has special bolt P/N 47205–1 or 47205–3: Within 1,600 flight cycles or 9 months after July 8, 2022 (the effective date of AD 2022–11–11), whichever occurs first, modify the NLG shock strut assembly, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–161, Revision B, dated March 31, 2021, including UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 3, dated March 26, 2021.

Note 1 to paragraph (j): After installing pivot pin retention bolt part number NAS6204–14D, paragraphs (g), (h), and (i) of this AD applies to pivot pin retention bolt part number NAS6204–14D.

(k) New Replacement

Within 8,000 flight hours or 48 months, whichever occurs first, after the effective date of this AD, remove pivot pin linkage components and replace pivot pin P/N 47127–1 or P/N 47127–3 and tow fitting assembly P/N 47160–1 with pivot pin P/N 47127–5 and tow fitting assembly P/N 47160–3, in accordance with Section 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–173, dated November 30, 2022, including Collins Aerospace Service Bulletin 47100–32–153, dated November 10, 2022. Accomplishing the replacement required by this paragraph terminates the requirements of paragraphs (g), (h), (i) and (j) of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before July 8, 2022 (the effective date of AD 2022–11–11), using De Havilland Aircraft of Canada Limited Service Bulletin 84–32–161, dated April 7, 2020, including UTC Aerospace Systems Service Bulletin 47100–32–145, dated April 3, 2020; or De Havilland Aircraft of Canada Limited Service Bulletin 84–32–161, Revision A, dated January 27, 2021, including UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 2, dated January 4, 2021.

(m) Parts Installation Prohibition

As of the effective date of this AD, no person may install pivot pin P/N 47127–1 or P/N 47127–3 as a replacement part for pivot pin P/N 47127–5 on De Havilland Aircraft of Canada Limited Model DHC–8–401 and DHC–8–402 airplanes.

(n) Additional AD Provisions

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

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

(o) Additional Information

(1) Refer to Transport Canada AD CF–2023–22, dated March 30, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2024–0756.

(2) For more information about this AD, contact Deep Gaurav, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 518–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(p) 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.

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) De Havilland Aircraft of Canada Service Bulletin 84–32–173, dated November 15, 2022, including Collins Aerospace Service Bulletin 47100–32–153, dated November 10, 2022.

Note 2 to paragraph (p)(3)(i): De Havilland issued De Havilland Service Bulletin 84–32–173, dated November 15, 2022, with Collins Aerospace Service Bulletin 47100–32–153, dated November 10, 2022, attached as one ''merged'' file for the convenience of affected operators.

(ii) [Reserved]

(4) The following service information was approved for IBR on July 8, 2022 (87 FR 33627, June 3, 2022).

(i) De Havilland Aircraft of Canada Limited Service Bulletin 84–32–161, Revision B, dated March 31, 2021, including UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 3, dated March 26, 2021.

Note 3 to paragraph (p)(4)(i): De Havilland issued De Havilland Service Bulletin 84–32–161, Revision B, dated March 31, 2021, with UTC Aerospace Systems Service Bulletin 47100–32–145, Revision 3, dated March 26, 2021, attached as one ''merged'' file for the convenience of affected operators.

(ii) [Reserved]

(5) The following service information was approved for IBR on January 5, 2022 (86 FR 72174, December 21, 2021).

(i) De Havilland Aircraft of Canada Limited Service Bulletin 84–32–167, dated August 12, 2021.

(ii) De Havilland Aircraft of Canada Limited Temporary Revision ALI–0223, dated October 15, 2020.

(6) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* website *dehavilland.com.*

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

(8) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations,* or email *fr.inspection@nara.gov.*

Issued on March 15, 2024.

Victor Wicklund,

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

[FR Doc. 2024–05963 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131756–11]

RIN 1545–BL51

Transactions Between Related Persons and Partnerships; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–131756–11) published in the **Federal Register** on November 27, 2023, containing proposed regulations that would update regulations regarding whether persons are treated as related persons who are subject to certain special rules pertaining to transactions with partnerships.

DATES: Written or electronic comments were to be received by February 26, 2024.

ADDRESSES: Commenters were strongly encouraged to submit public comments electronically.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, relating to section 267, Livia Piccolo, (202) 317–7007 (not a toll-free number); concerning the proposed regulation relating to section 707, Charles D. Wien, (202) 317–5279 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–131756–11) that is the subject of this correction is under sections 267 and 707 of the Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–131756–11) contains an error that needs to be corrected.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–131756–11) that is the subject of FR Doc. 2023–25715, published on November 27, 2023, is corrected on page 82792, in the third column, by correcting the fifth line of the heading to read ''1545–BL51''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–06136 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–117542–22]

RIN 1545–BQ96

Advance Notice of Third-Party Contacts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the notice that the IRS must provide to a taxpayer in advance of IRS contact with a third party with respect to the determination or collection of the taxpayer's tax liability, to reflect amendments made to the applicable tax law by the Taxpayer First Act of 2019. The regulations would affect taxpayers to whom the IRS must provide advance notice of IRS contact with such third parties.

DATES: Electronic or written comments and requests for a public hearing must be received by May 21, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and IRS REG–117542–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments submitted electronically or on paper to the public docket. *Send paper submissions to:* CC:PA:01:PR (REG–117542–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brittany Harrison of the Office of the Associate Chief Counsel (Procedure and Administration), (202) 317–6833 (not toll-free number); concerning the submission of comments and requests for a public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would amend the Procedure and Administration Regulations (26 CFR part 301) relating to the advance notice of IRS contact with third parties that must be provided to taxpayers under section 7602(c) of the Internal Revenue Code (Code).

Generally, the Federal tax system relies upon taxpayers' self-assessment and reporting of their tax liabilities. The expansive information-gathering authority that Congress has granted to the Secretary of the Treasury or her delegate (Secretary) under the Code includes the IRS's broad examination and summons authority, which allows the IRS to determine the accuracy of that self-assessment. *See United States* v. *Arthur Young & Co.,* 465 U.S. 805, 816 (1984). Section 7602(a) provides that, for the purpose of ascertaining the correctness of any return, making a return in cases in which none has been made, determining the liability of any person for any internal revenue tax, or collecting any such liability, the Secretary is authorized to examine books and records, issue summonses seeking documents and testimony, and take testimony from witnesses under oath as may be relevant or material. Section 7602(b) further provides that the purposes for which the Secretary may examine books and records, issue summonses, and take testimony under oath include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

Section 7602(c) was added to the Code by section 3417 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685 (RRA 98). Section 7602(c)(1), as added by RRA 98, required that the IRS provide the taxpayer ''reasonable notice in advance'' before it contacted a third party with respect to the determination or collection of the tax liability of such taxpayer. Final regulations interpreting and implementing section 7602(c) as enacted by RRA 98 were promulgated in 2002. TD 9028 (67 FR 77419). Section 301.7602–2(d)(1) of the Procedure and Administration Regulations provides that the pre-contact notice may be given

either orally or in writing. If notice is written, it may be given in any manner that the IRS employee who gives such notice reasonably believes will be received by the taxpayer prior to the contact with the third party. Written notice is considered reasonable if it is mailed to the taxpayer's last known address, given in person, left at the taxpayer's dwelling or usual place of business, or actually received by the taxpayer. Section 301.7602–2(d)(2) provides that taxpayers need not be given pre-contact notice for contacts with third parties of which advance notice otherwise has been provided to the taxpayer pursuant to another statute, regulation, or administrative procedure.

Section 1206 of the Taxpayer First Act of 2019 (TFA), Public Law 116–25 (133 Stat. 981), which was enacted into law on July 1, 2019, amended section 7602(c)(1) to provide that IRS officers or employees may not contact a third party with respect to the determination or collection of the tax liability of a taxpayer unless the IRS first provides the taxpayer with advance notice meeting certain requirements. The notice must specify the period, not to exceed one year, during which the IRS intends to make the contact. The IRS must provide the notice to the taxpayer no later than 45 days before the beginning of such period, except as otherwise provided by the Secretary. The IRS may issue multiple notices to the same taxpayer with respect to the same tax liability that, taken together, cover an aggregate period greater than one year. The IRS may not issue a notice under section 7602(c) unless the IRS intends, at the time the notice is issued, to contact third parties during the period specified in that notice. The IRS may meet this intent requirement based on the assumption that the information sought to be obtained by the contact will not be obtained by other means before such contact. The TFA amendments apply to notices provided, and contacts made, after August 15, 2019.

Explanation of Provisions

I. Overview

These proposed regulations would update the regulations in § 301.7602–2(a) and (d) pertaining to the advance notice that must be provided to taxpayers prior to IRS contact with third parties to conform to the new statutory language of section 7602(c). These proposed regulations also would provide, pursuant to the Secretary's authority in section 7602(c)(1)(B), exceptions to the 45-day advance notice requirement if delaying contact with third parties for 45 days after providing notice to the taxpayer would impair tax administration. In these situations, the 45-day advance notice period is proposed to be reduced or eliminated to ensure sufficient time for the IRS to properly conduct certain time-sensitive examination or collection activities.

II. Notice of Third-Party Contacts

The proposed regulations would amend § 301.7602–2(a) and (d) pertaining to third-party contacts to implement the amendments made to section 7602(c)(1) by section 1206 of the TFA. Like existing § 301.7602–2(a), proposed § 301.7602–2(a)(1) would provide that, subject to the exceptions in existing § 301.7602–2(f), IRS officers or employees may not contact third parties with respect to the determination or collection of the tax liability of a taxpayer unless the requirements of section 7602(c) and proposed § 301.7602–2(d) have been satisfied. The exceptions in existing § 301.7602–2(f) implement the statutory exceptions set forth in section 7602(c)(3) prior to, and unaffected by, the TFA.

In cases not covered by the exceptions in section 7602(c)(3) and existing § 301.7602–2(f), proposed § 301.7602–2(d)(1) would implement the requirements of section 7602(c)(1) as amended by the TFA that IRS officers or employees may not contact third parties with respect to the determination or collection of the tax liability of a taxpayer unless the IRS provides advance notice to the taxpayer (third-party contact notice). The third-party contact notice must specify a period, not to exceed one year, during which the contact is intended to occur and inform the taxpayer that third-party contacts are intended to be made during such period. Proposed § 301.7602–2(d)(1) further provides that the third-party contact notice must be in writing. The requirement that the third-party contact notice be in writing is intended to ensure compliance with the advance notice requirement and to eliminate any potential confusion as to the date on which notice was provided to the taxpayer or the contents of the third-party contact notice. Subject to certain enumerated exceptions described in part III of this Explanation of Provisions, proposed § 301.7602–2(d)(1)(iii) would implement the requirement of section 7602(c)(1)(B) that the third-party contact notice generally must be provided to the taxpayer no later than 45 days before the beginning of the period in which the contact is intended to be made (45-day advance notice period). Proposed § 301.7602–2(d)(2) would further provide the methods by which the IRS will provide a third-party contact notice to the taxpayer, which are similar to the methods set forth in existing § 301.7602–2(d)(1)(i) through (iv).

As provided in the second sentence of section 7602(c)(1), proposed § 301.7602–2(d)(3) provides that the IRS is not prevented from issuing successive notices to the same taxpayer with respect to the same tax liability for periods (each not greater than one year) that, in the aggregate, exceed one year.

As provided in the third and fourth sentences of section 7602(c)(1), proposed § 301.7602–2(d)(4) would provide that no third-party contact notice will be issued under proposed § 301.7602–2(d) unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice, which intent may be met by the IRS on the basis of the assumption that the information sought to be obtained by the third-party contact will not be obtained by other means before such contact.

III. Exceptions to the 45-Day Advance Notice Requirement

Proposed § 301.7602–2(d)(5) provides several exceptions to the 45-day advance notice requirement, in particular with respect to the IRS's fuel compliance program, nonjudicial redemption investigations, and in limited time-sensitive circumstances involving assessment or collection of tax.

A. Fuel Compliance Program

Section 4081 of the Code imposes an excise tax on certain motor and aviation fuels. Section 4082 of the Code exempts diesel fuel and kerosene from such tax if used for certain nontaxable purposes specified in section 4082(b), including fuel sold for use or used in a train, school bus, or intracity transportation; for farm use; or for an off-highway business use, as defined in section 6421(e)(2) of the Code, except mobile machinery, as defined in section 6421(e)(2)(C). Tax-exempt fuel is required to be indelibly dyed in a minimum concentration specified in § 48.4082–1(b)(1) of the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) or otherwise pre-approved by the IRS. Section 4083(d) of the Code provides that in administering sections 4081 through 4084 of the Code the Secretary may enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel, taking and removing samples of such fuel, and inspecting any

books and records and any shipping papers pertaining to fuel. Section 4083(d) further provides that the Secretary may also detain, for these purposes, any container that contains or may contain any taxable fuel. Refusal to admit entry or other refusal to permit an action authorized by section 4083(d) may result in certain penalties under sections 6717 and 7342 of the Code.

Section 6715(a) of the Code provides that a penalty in the amount prescribed in section 6715(b) will be imposed, in addition to any tax, if (1) any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel, (2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed, (3) any person willfully alters, chemically or otherwise, or attempts to so alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel, or (4) any person who has knowledge that a dyed fuel which has been altered (as described in section 6715(a)(3)) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel. Section 6715(d) provides that if a penalty is imposed under section 6715 on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty is jointly and severally liable with such entity for such penalty.

Section 6715A of the Code provides that a person who tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, or any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 who fails to maintain the security standards for such system as established by the Secretary, must pay a penalty in the amount prescribed in section 6715A(b) in addition to any tax. As with section 6715, if a penalty is imposed under section 6715A on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty is jointly and severally liable with such entity for such penalty.

Section 6720A(a) of the Code provides that any person who knowingly transfers for resale, sells for resale, or holds out for resale any liquid for use in a diesel-powered highway vehicle or a diesel-powered train that does not meet applicable Environmental Protection Agency regulations must pay, in addition to any tax, a penalty of $10,000 for each such transfer, sale, or holding out for resale. In addition, section 6720A(b) provides that any person who knowingly holds out for sale (other than for resale) any liquid described in section 6720A(a) must pay a penalty of $10,000 for each such holding out for sale, in addition to any tax on such liquid.

Under the IRS's Fuel Compliance Program, fuel compliance officers and agents (FCO/As) conduct field inspections authorized under section 4083(d). If they discover an improper use of dyed fuel or an improper dye concentration, they determine how the fuel came to be in the vehicles inspected. The individuals and entities inspected by FCO/As may be classified as either taxpayers or third parties, depending on the facts of a given inspection. FCO/As typically cannot know how to classify the parties involved until the inspection is conducted.

One type of inspection conducted by FCO/As occurs after fuel is removed via a terminal rack into a transporting truck or railcar. A terminal is a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. A rack is a mechanism capable of delivering taxable fuel, usually through pipes, into a means of transport other than a pipeline or vessel. *See* § 48.4081–1(b). The owner of the terminal rack could be liable for a penalty if the dye concentration is incorrect. Because the transport truck drivers are typically not employed by the owner of the terminal, they may be considered third parties relative to the owner of the terminal. FCO/As require immediate access to the fuel in the loaded transport trucks to determine the correct dye concentration prior to the fuel being delivered into the fuel distribution system. FCO/As also conduct inspections of various vehicles other than those leaving the terminal racks; for example, they may inspect a truck at a weigh station to determine if the truck contains dyed fuel. In such situations FCO/As require the ability to quickly investigate the origin of dyed fuel if impermissible dyed fuel is discovered. For example, if the driver of the vehicle is a company employee and the driver tells the FCO/A that the company owner instructed the driver to use dyed fuel, then the FCO/A ordinarily would want to conduct an investigation at the company's yard as soon as possible to determine culpability.

Requiring that the IRS provide 45 days advance notice of third-party contacts in the context of these fuel compliance examinations would significantly impair the enforcement work performed by FCO/As. Because these inspections are conducted in real time and are not based on a tax return, it is imperative that FCO/As have the ability to obtain information, develop facts, and determine potential liability in real time, given the risk that any delay would result in an inability to properly conduct the examination as information dissipates. For example, dyed diesel fuel may be removed or replaced from an oil drilling rig before the FCO/A is able to complete an investigation. Proposed § 301.7602–2(d)(5)(i) therefore would provide that the IRS may provide same-day third-party contact notices to the taxpayer with respect to contacts intended to be made by the IRS, which would be made after the provision of the third-party contact notice on that day, in connection with investigations involving potential liability for penalties under section 6715, 6715A, or 6720A or in connection with the IRS's exercise of authority under section 4083(d). The IRS would therefore be able to make third-party contacts in these types of investigations immediately after providing the taxpayer with a third-party contact notice.

B. Nonjudicial Sale Redemption Investigations

Creditors may foreclose on property through judicial or nonjudicial processes, as provided by State law. Pursuant to section 7425(b) of the Code, a nonjudicial foreclosure sale will discharge a junior Federal tax lien from real or personal property if a notice of Federal tax lien has been filed more than 30 days before the sale and the foreclosing creditor gives the IRS notice of the sale at least 25 days in advance. Under section 7425(d) of the Code, however, the IRS has 120 days from the date of the nonjudicial foreclosure sale (or longer if provided by State law) to redeem real property from the purchaser. Redemption is accomplished by paying the purchaser the amount paid at the sale, interest, and certain expenses. The purpose of the redemption is for the IRS to sell the real property for a higher amount, a result which would benefit the taxpayer as well, as any additional sale proceeds would satisfy more of the taxpayer's liability or potentially lead to a surplus over the amount of the liability.

Prior to redeeming the property, the IRS must undertake an investigation in order to determine the potential benefits and viability of a potential redemption. The IRS's Civil Enforcement Advisory and Support Office (CEASO) has primary responsibility for receiving and

screening nonjudicial sale notices for redemption potential. Generally, if the property value significantly exceeds the nonjudicial sale price, the CEASO refers the case to a revenue officer for a more thorough investigation and, if appropriate, redemption action. Such an investigation may involve the CEASO or the assigned revenue officer discussing the property and foreclosure with third parties. For example, it may be necessary for the IRS to determine the value of the property by researching records or consulting valuation specialists; to gather information about the nonjudicial sale by researching the balances of encumbrances against the property and inquiring about issues that could affect the amount realized through a redemption sale, for example, renter's claims; to notify the nonjudicial sale purchaser of the possible redemption; to secure a guaranteed bidder for the post-redemption sale by contacting prospective bidders or advertising for bids; to obtain management approval for the redemption; to secure funding for the redemption from the revolving fund for redemption of real property under section 7810 of the Code; to deliver the redemption check to the sale purchaser; and to complete the redemption by filing the necessary documentation with the recording office within 120 days from the date of sale. Some of these contacts may be considered third party contacts subject to the 45-day advance notice requirement.

The 45-day advance notice requirement of section 7602(c) would jeopardize the IRS's ability to redeem property. The redemption investigation cannot begin in earnest until after the foreclosure sale, at which point the sale price is known, and which commences the 120-day redemption period. The earliest date that the IRS could give the taxpayer advance notice of third-party contacts is on the date the CEASO receives notice of the sale. The 45-day advance notice period would thus necessarily start after the beginning of the 120-day redemption period, and the IRS may not be able to notify the sale purchaser of the possible redemption until the 46th day of the redemption period. As a consequence, the IRS would have fewer than 74 days to fully determine the redemption potential, negotiate with the purchaser on potentially releasing the IRS's redemption rights, canvas for bidders, secure funding, and complete the redemption process. This is highly unlikely to be feasible. Therefore, proposed § 301.7602–2(d)(5)(ii) would reduce the 45-day advance notice period to 10 days of advance notice in these situations.

C. Statutory Period for Assessment Expiring in One Year or Less

Section 6501(a) of the Code provides that the IRS generally has three years after an original return is filed or three years from the due date of the original return, whichever is later, within which to assess tax with respect to a particular tax year (statutory assessment period). Taxpayers and the IRS may extend the statutory assessment period by agreement under section 6501(c)(4). If the IRS needs to contact third parties in situations in which certain circumstances are present and one year or less remains on the statutory assessment period, tax administration would be impaired if the IRS were required to provide 45 days advance notice to the taxpayer before contacting the third parties.

1. Certain Examination Cases

Proposed § 301.7602–2(d)(5)(iii) would reduce the 45-day advance notice requirement to 10 days of advance notice in certain examinations in which the statutory assessment period will expire one year or less from the date the IRS intends to contact third parties and delaying such contacts for 45 days will impair the government's ability to expeditiously determine and assess tax. This proposed reduction would allow the IRS to move forward and promptly conduct examination activities in cases in which the time to do so is limited and a delay will impair the government's ability to expeditiously determine and assess tax.

The 45-day advance notice period would be reduced to 10 days of advance notice if both the IRS has requested that the taxpayer provide, and the taxpayer has not provided within the time requested, a Form 872, *Consent to Extend the Time to Assess Tax,* to extend the statutory assessment period for a period necessary to complete the examination and other administrative actions, and the IRS case involves an issue or issues with respect to which the burden of proof would rest with the IRS in a court proceeding. The amount of evidence necessary to support the IRS's position will generally be greater in cases in which the IRS would have the burden of proof if a case were to proceed to trial (for example, in cases involving unreported income). The IRS therefore needs additional time within which to attempt to gather this evidence through the use of, among other things, contacts with third parties. Requiring the IRS to wait 45 days prior to making contact with third parties after notifying the taxpayer that such contacts are intended to be made would hinder the IRS's ability to complete its investigation prior to the end of the statutory assessment period and would negatively impact its ability to meet its burden. Proposed § 301.7602–2(d)(5)(iii) would therefore reduce the 45-day advance notice period to 10 days of advance notice in these situations.

2. Trust Fund Recovery Penalty Cases

Proposed § 301.7602–2(d)(5)(iv) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which the IRS's contact with third parties is made as part of an investigation into potential liability for the trust fund recovery penalty (TFRP) under section 6672 of the Code that includes one or more tax periods with one year or less remaining on the assessment statute of limitations as of the date the IRS intends to contact third parties. A revenue officer investigating potential TFRP liability must determine whether a person is both responsible and willful, and multiple persons may be liable for the same TFRP liability, making such investigations highly fact-intensive and challenging. As a result, an investigating revenue officer who is faced with a statutory assessment period that is ending will need to obtain information and documentation from third parties expeditiously in order to identify all responsible persons liable for the TFRP before the statutory assessment period ends. Waiting 45 days to contact third parties may prevent the revenue officer from identifying all responsible persons and from completing the TFRP investigation before the statutory assessment period ends. For example, if a potentially responsible person does not provide requested information and documentation by the deadline set by the revenue officer, provides only part of the information and documentation by the deadline, or asks for one or more extensions of time to respond, a revenue officer faced with a statutory assessment period that is ending will need to obtain information and documentation from third parties. Waiting 45 days before contacting third parties could result in assessments against some but not all responsible persons, assessments made against persons who were not responsible, or assessments against responsible persons who were not willful for some of the tax periods for which the trust fund taxes were not turned over to the IRS.

D. Statutory Period for Collection Expiring in One Year or Less

Section 6502 of the Code provides that the length of the period for collection after assessment of a tax liability generally is 10 years (statutory collection period). The end of the statutory collection period ends the government's right to pursue collection of an unpaid tax liability. If the IRS needs to contact third parties in situations in which certain circumstances are present and one year or less remains on the statutory collection period, tax administration would be impaired if the IRS were required to provide 45 days advance notice to the taxpayer before contacting the third parties.

Proposed § 301.7602–2(d)(5)(v) would reduce the 45-day advance notice requirement to 10 days of advance notice in two situations in which there is one year or less remaining before the statutory collection period ends as of the date the IRS intends to make contact with third parties. The first situation is if providing 45 days advance notice would prevent the IRS from having sufficient time to prepare a suit referral and deliver it to the Department of Justice (DOJ). The second situation is if reducing the 45-day advance notice period to 10 days of advance notice is necessary to allow sufficient time for collection activities.

1. Preparation and Delivery of Suit Referral to DOJ

Proposed § 301.7602–2(d)(5)(v)(A) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which one year or less remains before the statutory collection period ends as of the date the IRS intends to contact third parties and the IRS plans to prepare a suit referral requesting that DOJ file suit to reduce assessments to judgment or to foreclose Federal tax liens before the statutory collection period ends. In these types of cases, collection cannot be accomplished by administrative methods within the normal statutory period. The United States' success in litigation, however, is highly dependent upon the full and complete development of factual and legal issues before the suit is filed. The IRS therefore needs as much time as possible to develop its case prior to making the referral, and requiring a revenue officer to wait 45 days to contact third parties after notifying the taxpayer that such contact is intended to be made would impair the IRS's ability to timely make the referral. A suit recommendation to foreclose Federal tax liens against specific property titled in the name of someone other than the taxpayer, for example, may require a revenue officer to develop evidence, including by issuing third-party summonses, to prove the taxpayer's property was fraudulently transferred or that a person holds the property as the taxpayer's nominee. The IRS's Office of Chief Counsel must then review and approve the suit recommendation before a referral is made to DOJ. Finally, DOJ reviews the recommendation, drafts the pleadings, and files suit. Depending on the complexity of facts, this process can take a significant amount of time. Therefore, in these situations, proposed § 301.7602–2(d)(5)(v)(A) would provide that the IRS may contact the third parties 10 days after providing the third-party contact notice to the taxpayer.

2. Insufficient Time for Collection Activities

Proposed § 301.7602–2(d)(5)(v)(B) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which there is one year or less remaining before the statutory collection period ends as of the date the revenue officer intends to contact third parties and the revenue officer is unable to contact the taxpayer or the taxpayer refuses to pay, if the revenue officer concludes that the period should be reduced in order to maximize the amount of unpaid tax that can be collected by levy within the time remaining before the statutory collection period expires. This reduction in advance notice will allow the IRS sufficient time for investigative work, including to serve collection summonses, to find assets on which to levy, and to execute levies. Proposed § 301.7602–2(d)(5)(vi) would provide that a revenue officer is considered unable to contact the taxpayer if the taxpayer fails to respond to the revenue officer's reasonable attempts to contact the taxpayer directly within the time requested by the revenue officer.

Proposed § 301.7602–2(d)(5)(vii) would provide that the category of taxpayers who are considered to have refused to pay includes: (1) taxpayers who have the ability to pay their currently due and owing taxes including required tax deposits and estimated tax payments and to pay their delinquent taxes through an alternative collection method but will not do so; (2) taxpayers who cannot pay currently due taxes or pay their delinquent taxes, but who have assets in excess of amounts exempt from levy that will yield net proceeds and are unwilling or unable to borrow against or liquidate these assets; (3) taxpayers who are accruing employment tax liabilities without making required tax deposits; (4) taxpayers who use frivolous tax arguments and continue to resist the requirements to file and pay; (5) taxpayers who will not cooperate with the IRS (for example, taxpayers that evade contact or will not provide financial information); (6) taxpayers who will not comply with the results of the IRS's financial analysis or will not enter into an installment agreement or offer in compromise; (7) taxpayers who are wage earners who have not paid their tax liability and will not adjust their withholdings to prevent future delinquencies; (8) taxpayers who are self-employed, have not paid their tax liability, and will not make estimated tax payments to prevent future delinquencies; and (9) taxpayers who do not meet their commitments (without a valid reason) as required by an installment agreement, offer in compromise, or extension of time to pay. Proposed § 301.7602–2(d)(5)(vii) does not provide an exhaustive list of taxpayers who are considered to have refused to pay, and taxpayers who engage in conduct not specifically listed in the text of proposed § 301.7602–2(d)(5)(vii) may be considered to have refused to pay.

In these situations, the IRS faces significant delays in carrying out its collection activities and often must contact third parties. Requiring the IRS to wait 45 days prior to making contact with third parties after notifying the taxpayer that such contacts are intended to be made would hinder the IRS's ability to complete its collection activities in time. Therefore, in these situations, proposed § 301.7602–2(d)(5)(v)(B) and (d)(5)(vii) would provide the IRS the ability to contact third parties 10 days after providing the third-party contact notice to the taxpayer.

Proposed Applicability Date

The proposed regulations are proposed to apply to any contacts made on or after the date 30 days after the date of publication of final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

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

II. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the regulation solely provides for the elimination or reduction of the time period between when the IRS informs a taxpayer that it intends to contact third parties and when the actual contact may take place in certain situations. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

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

IV. Executive Order 13132: Federalism

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

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these temporary regulations is Brittany Harrison of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and IRS propose to amend 26 CFR part 301 as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 2.** Section 301.7602–2 is amended by revising paragraphs (a), (d), and (g) to read as follows:

§ 301.7602–2 Third party contacts.

(a) *Advance notice of third-party contacts*—(1) *In general.* Subject to the exceptions in paragraph (f) of this section, no officer or employee of the Internal Revenue Service (IRS) may contact any person other than the taxpayer with respect to the determination or collection of such taxpayer's tax liability unless the requirements of section 7602(c) of the Internal Revenue Code (Code) and paragraph (d) of this section have been satisfied.

(2) *Record of contacts.* A record of persons so contacted must be made and given to the taxpayer upon the taxpayer's request in accordance with paragraph (e) of this section.

* * * * *

(d) *Notice of third-party contacts*—(1) *In general.* An officer or employee of the IRS may not make third-party contacts with respect to the determination or collection of the liability of a taxpayer unless such contact occurs during a period (not greater than one year) that is specified in a written notice (third-party contact notice) that—

(i) The IRS provides to the taxpayer in accordance with paragraph (d)(2) of this section;

(ii) Informs the taxpayer that third-party contacts are intended to be made during such period; and

(iii) Except as set forth in paragraph (d)(5) of this section, is provided to the taxpayer no later than 45 days before the beginning of such period (45-day advance notice period).

(2) *Provision of third-party contact notice.* A third-party contact notice must be—

(i) Mailed to the taxpayer's last known address;

(ii) Given in person to the taxpayer;

(iii) Left at the taxpayer's dwelling or usual place of business; or

(iv) Actually received by the taxpayer.

(3) *Successive notices.* Nothing in paragraph (d)(1) of this section prevents the IRS from issuing successive notices to the same taxpayer with respect to the same tax liability for periods (each not greater than one year) that, in the aggregate, exceed one year.

(4) *Intent to contact.* A third-party contact notice will not be issued under paragraph (d) of this section unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice. Nothing in the preceding sentence will prevent the issuance of a third-party contact notice if the requirement of such sentence is met on the basis of the assumption that the information sought to be obtained by such contact will not be obtained by other means before such contact.

(5) *Exceptions to 45-day advance notice period.* The 45-day advance notice period of section 7602(c)(1)(B) of the Code and paragraph (d)(1) of this section is reduced in the case of third-party contacts described in paragraphs (d)(5)(i) through (v) of this section.

(i) *Fuel compliance program.* The 45-day advance notice period is reduced to

zero days, and the IRS may make a third-party contact at any time after the third-party contact notice has been given to the taxpayer, if—

(A) The IRS officer or employee intends to make a third-party contact in connection with its investigation of potential liability for penalties under section 6715, 6715A, or 6720A of the Code; or

(B) The IRS officer or employee intends to make a third-party contact in connection with its exercise of authority under section 4083(d) of the Code.

(ii) *Nonjudicial sale redemption investigations.* The 45-day advance notice period is reduced to 10 days if the IRS officer or employee intends to make a third-party contact in connection with an investigation into a potential nonjudicial sale redemption.

(iii) *Examination cases involving certain issues in which statutory period for assessment expiring within one year or less.* The 45-day advance notice period is reduced to 10 days in cases under examination in which there is one year or less remaining before the expiration of the period for assessment under section 6501(a) of the Code determined with regard to extensions (statutory assessment period) for any period included in the examination as of the date the IRS intends to make a third-party contact if:

(A) The case involves an issue with respect to which the IRS would have the burden of proof in any court proceeding; and

(B) The IRS has requested that the taxpayer provide the IRS with an unrestricted, signed Form 872, *Consent to Extend the Time to Assess Tax,* to extend the statutory assessment period by a period necessary to complete the examination and other administrative actions, and the taxpayer has not provided the requested signed Form 872 within the time requested.

(iv) *Trust fund recovery penalty investigations in which statutory period for assessment expiring within one year or less.* The 45-day advance notice period is reduced to 10 days in investigations into potential liability for penalties under section 6672 of the Code if there is one year or less remaining before the expiration of the statutory assessment period for any period included in the investigation as of the date the IRS intends to make a third-party contact.

(v) *Statutory period for collection expiring within one year or less.* The 45-day advance notice period is reduced to 10 days if there is one year or less remaining in the time period (or, in cases involving multiple time periods, in any time period in the case) under section 6502 of the Code within which the IRS may collect an assessed tax by levy or by a proceeding in court (statutory collection period) as of the date the IRS intends to make a third-party contact and either—

(A) The IRS intends to prepare and deliver to the Department of Justice (DOJ) a suit referral requesting that DOJ file suit to reduce assessments to judgment or to foreclose Federal tax liens before the expiration of the statutory collection period; or

(B) The revenue officer is unable to contact the taxpayer (as defined in paragraph (d)(5)(vi) of this section), or the taxpayer refuses to pay (as defined in paragraph (d)(5)(vii) of this section), and the revenue officer concludes that the advance notice period should be reduced in order to maximize the amount of unpaid tax that can be collected by levy within the time remaining before the statutory collection period expires.

(vi) *Unable to contact the taxpayer.* The revenue officer is unable to contact the taxpayer for purposes of paragraph (d)(5)(v)(B) of this section if the taxpayer fails to respond to the revenue officer's reasonable attempts to contact the taxpayer directly within the time requested by the revenue officer.

(vii) *Taxpayer refuses to pay.* The category of taxpayers who are considered to have refused to pay for purposes of paragraph (d)(5)(v)(B) of this section includes taxpayers described in this paragraph (d)(5)(vii). This paragraph (d)(5)(vii) is not an exhaustive list of taxpayers considered to have refused to pay, and taxpayers who engage in conduct not specifically described in this paragraph (d)(5)(vii) may be considered to have refused to pay.

(A) Taxpayers who have the ability to pay their currently due and owing taxes including required tax deposits and estimated tax payments and to pay their delinquent taxes through an alternative collection method but will not do so.

(B) Taxpayers who cannot pay currently due taxes or pay their delinquent taxes, but who have assets in excess of amounts exempt from levy that will yield net proceeds and are unwilling or unable to borrow against or liquidate these assets.

(C) Taxpayers who are accruing employment tax liabilities without making required tax deposits.

(D) Taxpayers who use frivolous tax arguments and continue to resist the requirements to file returns and pay their tax liability.

(E) Taxpayers who will not cooperate with the IRS (for example, taxpayers that evade contact or will not provide financial information).

(F) Taxpayers who will not comply with the results of the IRS's financial analysis or will not enter into an installment agreement or offer in compromise.

(G) Taxpayers who are wage earners who have not paid their tax liability and will not adjust their withholdings to prevent future delinquencies.

(H) Taxpayers who are self-employed, have not paid their tax liability, and will not make estimated tax payments to prevent future delinquencies.

(I) Taxpayers who do not meet their commitments (without a valid reason) as required by an installment agreement, offer in compromise, or extension of time to pay.

* * * * *

(g) *Applicability dates*—(1) *In general.* Except as provided for in paragraph (g)(2) of this section, this section is applicable on December 18, 2002.

(2) *Exceptions.* Paragraphs (a)(1) and (d) of this section apply to third-party contacts made on or after 30 days after [DATE OF PUBLICATION OF FINAL RULE].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024–05968 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0079]

RIN 1625–AA00

Safety Zone; Gulf of Mexico, Marathon, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters in the Gulf of Mexico offshore Marathon, Florida. This action is necessary to provide for the safety of life on these navigable waters of Marathon, FL, during the 2024 Race World Offshore 7 Mile Grand Prix. The proposed rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Key West or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 8, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0079 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician Second Class Hayden Hunt, Sector Key West Waterways Management Division, U.S. Coast Guard; telephone 305–292–8823, email *Hayden.B.Hunt@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On January 1, 2024, an organization notified the Coast Guard that they will be conducting the RWO 7 Mile Grand Prix high-speed boat race from 9 a.m. to 5 p.m. on April 27–28, 2024. The race will be conducted approximately 200 yards off of Marathon, FL. The Captain of the Port Sector Key West (COTP) has determined that potential hazards associated with the race would be a safety concern for anyone within a 500-yard radius of the racecourse.

The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment in the navigable waters within the safety zone. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034. In addition, the Coast Guard is providing a shorter than usual comment period to obtain public input before the upcoming boat race starting on April 27, 2024. The Coast Guard will use the input to determine if any changes are needed to the safety zone for the event.

III. Discussion of Proposed Rule

The COTP is proposing a safety zone from 8 a.m. until 5 p.m. on April 27–28, 2024. The safety zone would cover certain waters in the Gulf of Mexico offshore Marathon, FL. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the 2024 Race World Offshore 7 Mile Grand Prix, scheduled from 9 a.m. until 5 p.m. on April 27–28, 2024. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the Gulf of Mexico offshore Marathon for 9 hours each day. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone to protect persons and vessels operating in the area adjacent to the safety zone. This zone will only be enforced for 18 hours over two days within a specified area of the Gulf of Mexico offshore of Marathon, FL. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0079 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0079 to read as follows:

§ 165.T07–0079 Safety Zone; Gulf of Mexico, Marathon, FL.

(a) *Location.* The following area is a safety zone: All navigable waters within the following coordinates: Latitude 24°42.348′ N, longitude 081°08.377′ W, thence north offshore to latitude 24°42.979′ N, longitude 081°08.427′ W, thence east to latitude 24°43.433′ N, longitude 081°06.012′ W, thence south to latitude 24°43.028′ N, longitude 081°05.714′ W, thence southwest to latitude 24°42.840′ N, longitude 081°05.956′ W, thence west to latitude 24°42.796′ N, longitude 081°06.362′ W, located within the county of Monroe, FL. These coordinates are based on North American Datum.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 305–292–8727. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced each day from 8 a.m. until 5:00 p.m. on April 27, 2024 and April 28, 2024.

Jason D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Sector Key West.

[FR Doc. 2024–05904 Filed 3–21–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2023–0214; FXFR13350700640–245–FF07J00000]

RIN 1018–BH14

Subsistence Management Regulations for Public Lands in Alaska—2025–26 and 2026–27 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises regulations for fish and shellfish seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2025–2026 and 2026–2027 regulatory years. The Federal Subsistence Board (hereafter referred to as ''the Board'') is on a schedule of completing the process of revising subsistence taking of fish and shellfish regulations in odd-numbered years and subsistence taking of wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. When final, the resulting rulemaking replaces the existing subsistence fish and shellfish taking regulations. This proposed rule may also amend the general regulations on subsistence taking of fish and wildlife.

DATES:

Public meetings: The Federal Subsistence Regional Advisory Councils (hereafter referred to as ''the Councils'') will receive comments and make proposals to change this proposed rule at the concurrent sessions during a joint All-Council public meeting March 5–8, 2024, in Anchorage. The Councils will hold another round of public meetings to discuss and receive comments on the proposals and make recommendations on the proposals to the Board on several dates between August 19 and November 1, 2024 (see Alaska Subsistence Regional Advisory Council Meetings for 2024; 89 FR 10095; February 13, 2024). The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, Alaska, in January 2025. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by May 21, 2024.

ADDRESSES: *Public meetings:* The Board and the Councils' public meetings are held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter Docket number FWS–R7–SM–2023–0214. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''
- *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–R7–SM–2023–0214; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803. If in-person meetings are held, you may also deliver a hard copy to the Designated Federal Officer attending any of the Councils' public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Acting Assistant Regional Director, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Gregory Risdahl, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 302–7354 or g*regory.risdahl@usda.gov.* In compliance with the Providing Accountability Through Transparency Act of 2023, please see Docket No. FWS–R7–SM–2023–0214 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Background

Under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (hereafter referred to as ''the Secretaries'') jointly implement the Federal Subsistence Management Program (hereafter referred to as ''the Program''). The Program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. Only Alaska residents of areas identified as rural are eligible to participate in the Program. The Secretaries published temporary regulations to carry out the Program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations on May 29, 1992 (57 FR 22940). Program officials have subsequently amended these regulations a number of times. Because the Program is a joint effort between the Departments of the Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): The Agriculture regulations are at title 36, ''Parks, Forests, and Public Property,'' and the Interior regulations are at title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1 through 242.28 and 50 CFR 100.1 through 100.28, respectively. Consequently, to indicate that identical changes are proposed for regulations in both titles 36 and 50, in this document we will present references to specific sections of the CFR as shown in the following example: § ____.24.

The Program regulations contain subparts as follows: subpart A (General Provisions); subpart B (Program Structure); subpart C (Board Determinations); and subpart D (Subsistence Taking of Fish and Wildlife). Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board (hereafter referred to as ''the Board'') to administer the Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D. Subpart C sets forth important Board determinations regarding program eligibility, *i.e.,* which areas of Alaska are considered rural and which species are harvested in those areas as part of a ''customary and traditional use'' for subsistence purposes. Subpart D sets forth specific harvest seasons and limits.

In administering the Program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (hereafter referred to as ''the Council(s)''). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Board, through the Councils, will hold public meetings in person and via teleconference on this proposed rule during individual Council breakout sessions at the Joint Regional Advisory Council meeting to be held in Anchorage, Alaska, on March 5–8, 2024. A public notice of specific dates and times, call-in number(s), and how to participate and provide public testimony will be published in local and statewide newspapers, announced in radio ads, and posted to the Program web page and social media at least 2 weeks prior to the March 5–8, 2024, public meeting.

After the comment period concludes, the written proposals to change the regulations at subpart D, take of fish and shellfish, and subpart C, customary and traditional use, will be compiled and distributed for public review. Written public comments will be accepted on the distributed proposals during a second 30-day public comment period, which will be announced in statewide newspaper and radio ads and posted to the Program web page and social media. The Board, through the Councils, will hold a second series of public meetings August 19 through November 1, 2024, to receive comments on specific proposals and to develop recommendations to the Board on the following dates:

TABLE 1—FALL 2024 MEETINGS OF THE FEDERAL SUBSISTENCE REGIONAL ADVISORY COUNCILS

Regional advisory council	Dates	Location
Southeast Alaska—Region 1	October 22–24	Ketchikan.
Southcentral Alaska—Region 2	October 10–11	Anchorage.
Kodiak/Aleutians—Region 3	September 4–6	Unalaska.
Bristol Bay—Region 4	October 29–30	Dillingham.
Yukon-Kuskokwim Delta—Region 5	August 27–29	Bethel.
Western Interior—Region 6	October 2–3	Galena.
Seward Peninsula—Region 7	October 24–25	Nome.
Northwest Arctic—Region 8	October 28–29	Kotzebue.
Eastern Interior—Region 9	October 8–10	Tanana.
North Slope—Region 10	August 19–20	Utqiagvik.

A public notice of specific dates, times, call-in number(s), and how to participate and provide public testimony will be published in local and statewide newspapers, announced in radio ads, and posted to the Program web page and social media at least 2 weeks prior to each meeting. The amount of work on each Council's agenda determines the length of each Council's meeting, but typically the meetings are scheduled to last 2 days. Occasionally a Council will lack information necessary during a scheduled meeting to make a recommendation to the Board or to provide comments on other matters affecting subsistence in the region. If this situation occurs, the Council may announce on the record a later teleconference to address the specific issue when the requested information or data is available; it is noted that any followup teleconference would be an exception and must be approved, in advance, by the Assistant Regional Director for the Office of Subsistence Management. These teleconferences are open to the public, along with opportunities for public comment; the date and time will be announced during the scheduled meeting, and that same information will be announced through news releases and local radio, newspaper, Program web page, and social media ads.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, Alaska, in January 2025. The Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify the general fish and wildlife regulations, fish and shellfish harvest regulations, and customary and traditional use determinations must include the following information:

a. Name, address, and telephone number of the requestor;

b. Each section and/or paragraph designation in the current regulations for which changes are suggested, if applicable;

c. A description of the regulatory change(s) desired;

d. A statement explaining why each change is necessary;

e. Proposed wording changes; and

f. Any additional information that you believe will help the Board in evaluating the proposed change.

The Board will immediately reject proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § ____.24 of subpart C (the regulations governing customary and traditional use), and §§ ____.25, ____.27, and ____.28 of subpart D (the general and specific regulations governing the subsistence take of fish and shellfish). If a proposal needs clarification, prior to being distributed for public review, the proponent may be contacted, and the proposal could be revised based on their input. Once a proposal is distributed for public review, no additional changes may be made as part of the original submission. During the January 2025

meeting, the Board may defer review and action on some proposals to allow time for cooperative planning efforts or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. A proponent of a proposal may withdraw the proposal, provided that it has not been considered, and a recommendation has not been made, by a Council. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via *https://www.regulations.gov,* your entire comment, including any personally identifiable information, will be posted on the Program's web page. If you submit a hardcopy comment that includes personally identifiable information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov* at Docket No. FWS–R7–SM–2023–0214, or by appointment, provided no public health or safety restrictions are in effect, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays, at: USFWS, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503.

Reasonable Accommodations

The Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Robbin La Vine, 907–786–3888, *subsistence@fws.gov,* or 800–877–8339 (TTY), 7 business days prior to the meeting you would like to attend.

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (herein after referred to as ''Tribes'') as listed in 82 FR 4915 (January 17, 2017). Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Alaska National Interest Lands Conservation Act does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: proposing changes to the existing regulations; commenting on proposed changes to the existing regulations; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation regarding subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

Developing the 2025–26 and 2026–27 Fish and Shellfish Seasons and Harvest Limit Proposed Regulations

In titles 36 and 50 of the CFR, the subparts C and D regulations are subject to periodic review and revision. The Board currently completes the process of revising subsistence take of fish and shellfish regulations in odd-numbered years and wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. Nonrural determinations are taken up during every other fish and shellfish cycle, beginning in 2018.

The Board reviews closures to the take of fish/shellfish and wildlife during each applicable cycle on a rotating schedule. The following table lists the current closures being reviewed for this cycle. When reviewing a closure, the Board may maintain, modify, or rescind the closure. If a closure is rescinded, the regulations will revert to the existing regulations in place prior to the closure, or if no regulations were in place, any changes or the establishment of seasons, methods and means, and harvest limits must go through the full public review process. The public is encouraged to comment on these closures, and anyone recommending that a closure be rescinded should submit a proposal to establish regulations for the area that was closed.

TABLE 2—FISH AND SHELLFISH CLOSURES TO BE REVIEWED BY THE FEDERAL SUBSISTENCE BOARD FOR THE 2025–2026 AND 2026–2027 REGULATORY YEARS

Fishery management area	Closure area
Norton Sound—Port Clarence Area	Unalakleet River upstream of the confluence of Chiroskey River (Chinook Salmon).
Yukon/Northern Area	Delta River (all fish).
Yukon/Northern Area	Nome Creek (Arctic Grayling).
Southeastern Alaska Area	Makhnati Island (Herring).

The current subsistence program regulations form the starting point for consideration during each new rulemaking cycle. Consequently, in this rulemaking action pertaining to fish and shellfish, the Board will consider proposals to revise the regulations in any of the following sections of titles 36 and 50 of the CFR:

- Section ____.24: customary and traditional use determinations;
- Section ____.25: general provisions governing the subsistence take of wildlife, fish, and shellfish;
- Section ____.27: specific provisions governing the subsistence take of fish; and
- Section ____.28: specific provisions governing the subsistence take of shellfish.

As such, the text of the proposed 2025–2027 subparts C and D subsistence regulations in titles 36 and 50 is the combined text of previously issued rules that revised these sections of the regulations. The following **Federal Register** citations show when these CFR sections were last revised. Therefore, the regulations established by these four final rules constitute the text of this proposed rule:

The text of the proposed amendments to 36 CFR 242.24 and 242.27 and 50 CFR 100.24 and 100.27 is the final rule for the 2023–2025 regulatory period for fish (89 FR 14746; February 29. 2024).

The text of the proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 is the final rule for the 2022–2024 regulatory period for wildlife (87 FR 44858; July 26, 2022).

The text of the proposed amendments to 36 CFR 242.28 and 50 CFR 100.28 is the final rule for the 2011–13 regulatory period for shellfish (76 FR 12564; March 8, 2011).

These regulations will remain in effect until subsequent Board action changes elements as a result of the public review process outlined above in this document and a final rule is published.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and; therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with section 810. This evaluation also supported the Secretaries' determination that the regulations will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100 and assigned OMB Control Number 1018–0075. 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. This control number has an expiration date of 01/31/2024; in accordance with regulations at 5 CFR part 1320, the Service is authorized to continue sponsoring the collection while the submission is pending at OMB.

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in OMB will review all significant rules. OIRA has determined that this proposed rule is not significant.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801

et seq.), this proposed rule is not a major rule. It will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on Federal public lands and waters. The scope of this program is limited by definition to certain public lands. Likewise, these proposed regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This proposed rule will be implemented by Federal agencies with no cost imposed on any State or local entities or Tribal governments.

Executive Order 12988

The Secretaries have determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, as described above under *Tribal Consultation and Comment,* the Secretaries, through the Board, will provide federally recognized Tribes and Alaska Native corporations a variety of opportunities for consultation: commenting on proposed changes to the existing regulations; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive order requires agencies to prepare statements of energy effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no statement of energy effects is required.

Drafting Information

- Justin Koller drafted this proposed rule under the guidance of Amee Howard of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:
- Chris McKee, Alaska State Office, Bureau of Land Management;
- Dr. Kim Jochum, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jill Klein, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Gregory Risdahl, Alaska Regional Office, USDA–Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2025–26 and 2026–27 regulatory years.

The text of the proposed amendments to 36 CFR 242.24 and 242.27 and 50 CFR 100.24 and 100.27 matches the amendatory instructions in 89 FR 14746 (February 29, 2024) (which is the final rule for the 2023–2025 regulatory period for fish).

The text of the proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 matches the amendatory instructions in 87 FR 44858 (July 26, 2022) (which is the final rule for the 2022–2024 regulatory period for wildlife).

The text of the proposed amendments to 36 CFR 242.28 and 50 CFR 100.28 matches the amendatory instructions in 76 FR 12564 (March 8, 2011) (which is the final rule for the 2011–13 regulatory period for fish and shellfish).

Amee Howard,

Acting Assistant Regional Director, U.S. Fish and Wildlife Service.

Gregory Risdahl,

Subsistence Program Leader, USDA–Forest Service.

[FR Doc. 2024–05821 Filed 3–21–24; 8:45 am]

BILLING CODE 4333–15–P; 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2020–0455; FRL–11807–01–R2]

Approval and Promulgation of Air Quality Implementation Plans; New York; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the regional haze state implementation plan (SIP) submitted by the State of New York through the Department of Environmental Conservation (NYSDEC or New York) on May 12, 2020, as satisfying applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule for the program's second implementation period. New York's SIP submission addresses the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility in mandatory Class I Federal areas, including regional haze. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. The EPA is taking this action pursuant to sections 110 and 169A of the Clean Air Act.

DATES: Written comments must be received on or before April 22, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2020–0455 at *https://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Controlled Unclassified Information (CUI) (formally referred to as Confidential Business Information (CBI)) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be CUI or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CUI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Robert Rutherford, U.S. Environmental Protection Agency, Air Programs Branch, Region II, 290 Broadway, New York, New York 10007–1866, at (212) 637–3712 or by email at *Rutherford.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is the EPA proposing?

On May 12, 2020, NYSDEC submitted a revision to its SIP to address regional haze for the second implementation period (''NY RH 2nd Implementation Period SIP submission''). NYSDEC supplemented its SIP submission on February 16, 2022. NYSDEC made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. The EPA is proposing to find that the NY RH 2nd Implementation Period SIP submission meets the applicable statutory and regulatory requirements and thus proposes to approve New York's SIP revision submission.

II. Background and Requirements for Regional Haze Plans

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[1] CAA 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' CAA 169A(a)(1). The CAA further directs the EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA 169A(a)(4). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in mandatory Class I Federal areas (hereinafter referred to as ''Class I areas'') that is ''reasonably attributable'' to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of the EPA's efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment; specifically, impairment from regional haze. CAA 169B. The EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR 51.308,[2] on July 1, 1999. (64 FR 35714, July 1, 1999). These regional haze regulations are a central component of the EPA's comprehensive visibility protection program for Class I areas.

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include: fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* sulfur dioxide (SO_2); nitrogen oxides (NO_X); and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[3]

[1] Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

[2] In addition to the generally applicable regional haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions' regional haze plans submitted no later than December 17, 2007, and thus are not relevant here.

[3] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b^{ext}) is a metric used to for expressing visibility and is measured in inverse megameters (Mm-1). The EPA's Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (''2019 Guidance'') offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. *See, e.g.,* 2019 Guidance at 16,

Continued

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and states ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to periodically submit SIP revisions to address such impairment. CAA 169A(b)(2);[4] *see* also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); (64 FR 35768, July 1, 1999). Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' CAA 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA 169A(b)(2)(A); 40 CFR 51.308(d), (e). States' first regional haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated long-term strategies originally due July 31, 2018, and every ten years thereafter. (64 FR 35768, July 1, 1999). The EPA established in the 1999 RHR that all states either have Class I areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area''; therefore, all states must submit regional haze SIPs.[5] (64 FR 35721, July 1, 1999).

Much of the focus in the first implementation period of the regional haze program, which ran from 2007 through 2018, was on satisfying states' BART obligations. First implementation period SIPs were additionally required to contain long-term strategies for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states containing Class I areas establish reasonable progress goals (RPGs) that are measured in deciviews and reflect the anticipated visibility conditions at the end of the implementation period, including from implementation of states' long-term strategies. The first planning period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I area in a state, the state was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five year period of 2000–2004) and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for each Class I area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area.[6] 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that States' long-term strategies must include the ''enforceable emissions limitations, compliance, schedules, and other measures as necessary to achieve the reasonable progress goals.'' 40 CFR 51.308(d)(3). In establishing their long-term strategies, states are required to consult with other states that also contribute to visibility impairment in a given Class I area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i), (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their long-term strategies, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their regional haze plans and an assessment of whether anything additional is needed to make reasonable progress, *see* 40 CFR 51.308(g), (h)—and to consult with the Federal Land Manager(s)[7] (FLMs) responsible for each Class I area according to the requirements in CAA 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for regional haze SIPs to clarify States' obligations and streamline certain regional haze requirements. The revisions to the regional haze program for the second and subsequent implementation periods focused on the requirement that States' SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for States to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the long-term strategy, and focused on making visibility improvements on the days with the most *anthropogenic* visibility impairment, as opposed to the days with the most visibility impairment overall. The EPA also revised requirements of the visibility protection program related to periodic progress reports and FLM consultation.

19, *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period*. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is 10 ln (b_{ext})/10 Mm − 1). 40 CFR 51.301.

[4] The RHR expresses the statutory requirement for states to submit plans addressing out-of-state class I areas by providing that states must address visibility impairment ''in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.'' 40 CFR 51.308(d), (f).

[5] In addition to each of the fifty states, the EPA also concluded that the Virgin Islands and District of Columbia must also submit regional haze SIPs because they either contain a Class I area or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. *See* 40 CFR 51.300(b), (d)(3).

[6] EPA established the URP framework in the 1999 RHR to provide ''an equitable analytical approach'' to assessing the rate of visibility improvement at Class I areas across the country. The start point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, EPA did not establish 2064 as the year by which the national goal *must* be reached. (64 FR 35731–32, July 1, 1999). That is, the URP and the 2064 date are not enforceable targets, but are rather tools that ''allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP.'' (82 FR 3078, 3084, January 10, 2017).

[7] The EPA's regulations define ''Federal Land Manager'' as ''the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobellow International Park, the Chairman of the Roosevelt-Campobellow International Park Commission.'' 40 CFR 51.301.

The specific requirements applicable to second implementation period regional haze SIP submissions are addressed in detail below.

The EPA provided guidance to the states for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, the EPA issued ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period'' (''2019 Guidance'').[8] On July 8, 2021, the EPA issued a memorandum containing ''Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period'' (''2021 Clarifications Memo'').[9] Additionally, the EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 ''Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' (''2018 Visibility Tracking Guidance''),[10] and the June 2020 ''Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' and associated Technical Addendum (''2020 Data Completeness Memo'').[11]

As previously explained in the 2021 Clarifications Memo, EPA intends the second implementation period of the regional haze program to secure meaningful reductions in visibility impairing pollutants that build on the significant progress states have achieved to date. The Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on states' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state. While there exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's National Ambient Air Quality Standards and Prevention of Significant Deterioration programs, as further emission reductions may be necessary to adequately protect visibility in Class I areas throughout the country.[12]

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. In order to address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),[13] which include representation from state and Tribal governments, the EPA, and FLMs, were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from State and Tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU), one of the five RPOs described above, is a collaborative effort of state governments, Tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Mid-Atlantic and Northeast corridor of the United States. Member states and Tribal governments (listed alphabetically) include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe, and Vermont. The Federal partner members of MANE–VU are EPA, U.S. National Parks Service (NPS), U.S. Fish and Wildlife Service (FWS), and U.S. Forest Service (USFS).

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA 169A(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in 40 CFR 51.308(f)(1) through (f)(3) generally mirroring the order of the steps in the reasonable progress analysis [14] and (f)(4) through (6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the

[8] Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

[9] Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[10] Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

[11] Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-usage-and-completeness-regional-haze-program.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

[12] *See, e.g.,* H.R. Rep No. 95–294 at 205 (''In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country.''), (''the mandatory class I increments of [the PSD program] do not adequately protect visibility in class I areas'').

[13] RPOs are sometimes also referred to as ''multi-jurisdictional organizations,'' or MJOs. For the purposes of this notice, the terms RPO and MJO are synonymous.

[14] EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in § 51.308(d), ''tracked the actual planning sequence.'' (82 FR 3091, January 10, 2017).

state's long-term strategy. *See* 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a state must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. *See* 40 CFR 51.308(f)(1). Each state having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. Reasonable progress is determined by applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. *See* 40 CFR 51.308(f)(2). A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress using the four statutory factors. Those measures are then incorporated into the state's long-term strategy. After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2) through (3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the SIP submissions due by July 31, 2021, for the second implementation period must address the requirements in 40 CFR 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A state must submit its regional haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and EPA's regulations. *See* CAA 169A(b)(2); CAA 110(a). Upon EPA approval, a SIP is enforceable by the Agency and the public under the CAA. If EPA finds that a state fails to make a required SIP revision, or if the EPA finds that a state's SIP is incomplete or if the EPA disapproves a state's SIP, the Agency must promulgate a Federal implementation plan (FIP) that satisfies the applicable requirements. CAA 110(c)(1).

A. Identification of Class I Areas

The SIP revision submission due by July 31, 2021, ''must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.'' 40 CFR 51.308(f); *see* also 40 CFR 51.308(f)(2).[15] Thus, the first step in developing a regional haze SIP is for a state to determine which Class I areas, in addition to those within its borders, ''may be affected'' by emissions from within the state. In the 1999 RHR, the EPA determined that all states contribute to visibility impairment in at least one Class I area, (64 FR 35720–22, July 1, 1999) and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' *Id.* at 35721.

A state must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the state. While the RHR does not require this evaluation to be conducted in any particular manner, EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.''

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in 40 CFR 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this subsection apply only to states having Class I areas within their borders; the required calculations must be made for each such Class I area. EPA's 2018 Visibility Tracking Guidance [16] provides recommendations to assist states in satisfying their obligations under 40 CFR 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. *See* 82 FR 3103–0 (Jan. 10, 2017).

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).[17] 40 CFR 51.301. A state must calculate visibility conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i), (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,[18] by estimating the

[15] The RHR uses the phrase ''that may be affected by emissions from the State'' to implement CAA 169A(b)(2)'s requirement that a state ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' submit a SIP.

[16] The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: ''Guidance for Tracking Progress Under the Regional Haze Rule,'' which can be found at *https://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf.*

[17] This notice also refers to the 20% clearest and 20% most anthropogenically impaired days as the ''clearest'' and ''most impaired'' or ''most anthropogenically impaired'' days, respectively.

[18] The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two

conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, states must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve in order to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period in order to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement.[19] Additionally, in the 2017 RHR Revisions, the EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR 3107 footnote 116.

EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in 40 CFR 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the state. The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is determined by applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis.[20] The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement in order to make reasonable progress towards the national visibility goal. *See* 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a state's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As EPA previously explained, consistent with the first implementation period, EPA generally expects that each state will analyze at least SO_2 and NO_X in selecting sources and determining control measures. See 2019 Guidance at 12, 2021 Clarifications Memo at 4. A state that chooses not to consider at least these two pollutants should demonstrate why such consideration would be unreasonable. 2021 Clarifications Memo at 4.

While states have the option to analyze *all* sources, the 2019 Guidance explains that ''an analysis of control measures is not required for every source in each implementation period,'' and that ''[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the Regional Haze Rule, which sets up an iterative planning process and anticipates that a state may not need to analyze control measures for all its sources in a given SIP revision.'' 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process ''should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.'' 2021 Clarifications Memo at 3.

EPA explained in the 2021 Clarifications Memo that each state has an obligation to submit a long-term strategy that addresses the regional haze visibility impairment that results from emissions from within that state. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state's total contribution to visibility impairment in Class I areas. A state should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.[21]

Thus, while states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained and result in a set of sources which capture a meaningful portion of the state's total contribution to visibility impairment. To this end, 40 CFR 51.308(f)(2)(i) requires that a state's

sets of natural conditions values. The rule states ''most impaired days or the clearest days'' where it should say ''most impaired days and clearest days.'' This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR 3098: ''In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of ''or'' has been corrected to ''and'' to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.''

[19] Being on or below the URP is not a ''safe harbor''; *i.e.,* achieving the URP does not mean that a Class I area is making ''reasonable progress'' and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. *See, e.g.,* 82 FR 3093 (Jan. 10, 2017).

[20] Per CAA section 169A(g)(1), in determining reasonable progress states must take into consideration ''the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' 42 U.S.C. 7491(g)(1).

[21] Similarly, in responding to comments on the 2017 RHR Revisions EPA explained that ''[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources, and another state has even more low-impact sources and/or some high impact sources.'' Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88.

SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[22] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply in order to satisfy the CAA's reasonable progress mandate.'' (82 FR 3091, Jan. 10, 2017). Thus, for each source it has selected for four-factor analysis,[23] a state must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088. The 2019 Guidance provides that ''[a] state must reasonably pick and justify the measures that it will consider, recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.'' 2019 Guidance at 29.

EPA's 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: ''A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.'' 2021 Clarifications Memo at 7. In addition to add-on controls and other retrofits (*i.e.,* new emission reduction measures for sources), EPA explained that states should generally analyze efficiency improvements for sources' existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance costs. Additionally, the 2021 Clarifications Memo provides that states that have assumed a higher emission rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emission rates as potential control options. That is, a state should consider a source's recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the state should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. The EPA's recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing ''effective controls.'' See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a state then collects information on the four factors with regard to each option identified. The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an optional fifth factor alongside the four statutory factors.[24] The 2019 Guidance provides recommendations for the types of information that can be used to characterize the four factors (with or without visibility), as well as ways in which states might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how states can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, EPA explained that while visibility impacts can reasonably be considered when comparing and choosing between multiple reasonable control options, visibility should not be used to reject controls that are reasonable given the four statutory factors. 2021 Clarifications Memo at 13. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, 40 CFR 51.308(f)(2)(i) provides that a state ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, 40 CFR 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state's long-term strategy and in its SIP.[25] If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and

[22] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

[23] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' (82 FR 3088, Jan. 10, 2017). However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

[24] *See, e.g.,* Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

[25] States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. *See* 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to EPA for inclusion in their SIPs but are not required to do so. *See, e.g.,* 82 FR 3108–09, Jan. 10, 2017 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

must be included in the SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source's existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. *See* CAA 169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source's existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a state can demonstrate that a source's existing measures are *not* necessary to make reasonable progress. Specifically, if a state can demonstrate that a source will continue to implement its existing measures and will not increase its emission rate, it may not be necessary to have those measures in the long-term strategy in order to prevent future emission increases and future visibility impairment. EPA's 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source's existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the state can make such a demonstration, it need not include a source's existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in 40 CFR 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, 40 CFR 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the state relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all state participants. In addition to the explicit regulatory requirement to document the technical basis of their reasonable progress determinations, states are also subject to the general principle that those determinations must be reasonably moored to the statute.[26] That is, a state's decisions about the emission reduction measures that are necessary to make reasonable progress must be consistent with the statutory goal of remedying existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a state's long-term strategy for making reasonable progress. Additionally, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [27] that states must consider in developing their long-term strategies: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The 2019 Guidance provides that a state may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be considered at the same stage of the process. See 2019 Guidance at 21. EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas. Additionally, states should not rely on these additional factors to summarily assert that the state has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. States can, however, consider these factors in a more tailored manner, *e.g.,* in choosing between multiple control options when all are reasonable based on the four statutory factors.[28] 2021 Clarifications Memo at 13.

Because the air pollution that causes regional haze crosses state boundaries, 40 CFR 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. Consultation allows for each state that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between states outside of RPO processes may also occur. If a state, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines

[26] *See Arizona ex rel. Darwin* v. *U.S. EPA,* 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska* v. *U.S. EPA,* 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota* v. *EPA,* 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma* v. *EPA,* 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); cf. also *Nat'l Parks Conservation Ass'n* v. *EPA,* 803 F.3d 151, 165 (3d Cir. 2015); *Alaska Dep't of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 485, 490 (2004).

[27] The five ''additional factors'' for consideration in § 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

[28] In particular, EPA explained in the 2021 Clarifications Memo that states should not rely on the considerations in 40 CFR 51.308(f)(2)(iv)(A) and (E) to summarily assert that the state has already made sufficient progress and therefore does not need to achieve any additional emission reductions. 2021 Clarifications Memo at 13.

those measures are not necessary to make reasonable progress, that state must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). The EPA will consider the technical information and explanations presented by the submitting state and the state with which it disagrees when considering whether to approve the state's SIP. See *id.;* 2019 Guidance at 53. Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals ''measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.'' (82 FR 3091, Jan. 10, 2017). Their primary purpose is to assist the public and the EPA in assessing the reasonableness of states' long-term strategies for making reasonable progress towards the national visibility goal. *See* 40 CFR 51.308(f)(3)(iii) through (iv). States in which Class I areas are located must establish two RPGs, both in deciviews—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the state with the Class I area, as well as all other contributing states, have included in their long-term strategies for the second implementation period.[29] The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in states' long-term strategies (as well as other measures required under the CAA), they cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they ''provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.'' 2019 Guidance at 46. While states are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.'' Thus, states are required to have emission reduction measures in their long-term strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and shows no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. *See* 40 CFR 51.308(f)(1)(i), (82 FR 3097–98, Jan. 10, 2017).

So that RPGs may also serve as a metric for assessing the amount of progress a state is making towards the national visibility goal, the RHR requires states with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide, ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.'' The 2019 Guidance provides suggestions about how such a ''robust demonstration'' might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or below the URP based on only on-the-books and/or on-the-way control measures (*i.e.,* control measures already required or anticipated before the four-factor analysis is conducted) is not a ''safe harbor'' from the CAA's and RHR's requirement that all states must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural visibility conditions. However, the URP is not based on consideration of the four statutory factors and therefore cannot answer the question of whether the amount of progress being made in any particular implementation period is ''reasonable progress.'' *See* 82 FR 3093, 3099–3100 (Jan. 10, 2017); 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this subsection apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. A state with Class I areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all Class I areas within the state. SIP revisions for such states must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I areas, as well as reporting of all visibility monitoring data to the EPA at least annually. Compliance with the monitoring strategy requirement may be met through a state's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40

[29] RPGs are intended to reflect the projected impacts of the measures all contributing states include in their long-term strategies. However, due to the timing of analyses and of control determinations by other states, other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their long-term strategies on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

CFR 51.308(f)(6), (f)(6)(i), (f)(6)(iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I area and tracks visibility impairment over time.

All states' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the state to regional haze visibility impairment in affected Class I areas. 40 CFR 51.308(f)(6)(ii), (iii). *S*ection 51.308(f)(6)(v) further requires that all states' SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to EPA review as part of the Agency's evaluation of a SIP revision.[30] All states' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a state may note in its regional haze SIP that its compliance with the Air Emissions Reporting Rule (AERR) in 40 CFR part 51 subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a state may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I areas.[31]

Separate from the requirements related to monitoring for regional haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at 40 CFR 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment.'' [32] Under this provision, if the EPA or the FLM of an affected Class I area has advised a state that additional monitoring is needed to assess reasonably attributable visibility impairment, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a state's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. *See* 81 FR 26942, 26950 (May 4, 2016); 82 FR 3119 (January 10, 2017). To this end, every state's SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the state's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

A core component of the progress report requirements is an assessment of changes in visibility conditions on the clearest and most impaired days. For second implementation period progress reports, 40 CFR 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions in order to assess progress made to date. *See* 40 CFR 51.308(g)(3)(ii). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. *See* 40 CFR 51.308(g)(3)(iii), (f)(5). Since different states submitted their first implementation period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the state over the period since they submitted their first implementation period progress reports. *See* 40 CFR 51.308(g)(4), (f)(5). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by the previous progress report and requires states' SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the state. This assessment must include an explanation of whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its long-term strategy for the first implementation period.

G. Requirements for State and Federal Land Manager Coordination

Clean Air Act section 169A(d) requires that before a state holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the state must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed ''early enough,'' but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). In order for the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the state addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for

[30] *See* ''Step 8: Additional requirements for regional haze SIPs'' in 2019 Regional Haze Guidance at 55.

[31] *Id.*

[32] EPA's visibility protection regulations define ''reasonably attributable visibility impairment'' as ''visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.'' 40 CFR 51.301.

continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. The EPA's Evaluation of New York's Regional Haze Submission for the Second Implementation Period

A. Background on New York's First Implementation Period SIP Submission

NYSDEC submitted its regional haze SIP for the first implementation period to the EPA on March 15, 2010, and supplemented it on August 2, 2010, April 16, 2012, and July 2, 2012. The EPA approved New York's first implementation period regional haze SIP submission on August 28, 2012 (77 FR 51915). EPA's approval included, but was not limited to, seventeen source-specific SIP revisions containing permits for Best Available Retrofit Technology, revisions to Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 249, ''Best Available Retrofit Technology (BART),'' and revisions to section 19–0325 of the New York Environmental Conservation Law which regulates the sulfur content of fuel oil. Although New York State addressed most of the issues identified in EPA's proposal, EPA promulgated a Federal Implementation Plan to address two sources for which EPA disapproved New York's BART determinations. The requirements for regional haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e) and 40 CFR 51.308(b). Pursuant to 40 CFR 51.308(g), New York was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period, which NYSDEC did on June 16, 2015. The EPA approved the progress report into the New York SIP on September 29, 2017 (82 FR 45499, September 29, 2017).

B. New York's Second Implementation Period SIP Submission and the EPA's Evaluation

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f), on May 12, 2020,[33] NYSDEC submitted a revision to the New York SIP to address the jurisdiction's regional haze obligations for the second implementation period, which runs through 2028. New York made its 2020 Regional Haze SIP submission available for public comment on August 7, 2019. NYSDEC received and responded to public comments and included the comments and responses to those comments in their submission to the EPA.

The following sections describe New York's SIP submission, including analyses conducted by MANE–VU and New York's determinations based on those analyses, New York's assessment of progress made since the first implementation period in reducing emissions of visibility impairing pollutants, and the visibility improvement progress at nearby Class I areas. This notice also contains EPA's evaluation of New York's submission against the requirements of the CAA and RHR for the second implementation period of the regional haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each state in which any Class I area is located, or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area, to have a plan for making reasonable progress toward the national visibility goal. The RHR incorporates this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan ''must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State,'' and (f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas.

The EPA explained in the 1999 RHR preamble that the CAA section 169A(b)(2) requirement that states submit SIPs to address visibility impairment establishes ''an 'extremely low triggering threshold' in determining which States should submit SIPs for regional haze.'' (64 FR 35721, July 1, 1999). In concluding that each of the contiguous 48 states and the District of Columbia meet this threshold,[34] the EPA relied on ''a large body of evidence demonstrating that long-range transport of fine PM contributes to regional haze,'' *id.,* including modeling studies that ''preliminarily demonstrated that each State not having a Class I area had emissions contributing to impairment in at least one downwind Class I area.'' *Id.* at 35722. In addition to the technical evidence supporting a conclusion that each state contributes to *existing* visibility impairment, the EPA also explained that the second half of the national visibility goal—preventing *future* visibility impairment—requires having a framework in place to address future growth in visibility-impairing emissions and makes it inappropriate to ''establish criteria for excluding States or geographic areas from consideration as potential contributors to regional haze visibility impairment.'' *Id.* at 35721. Thus, the EPA concluded that the agency's ''statutory authority and the scientific evidence are sufficient to require all States to develop regional haze SIPs to ensure the prevention of any future impairment of visibility, and to conduct further analyses to determine whether additional control measures are needed to ensure reasonable progress in remedying existing impairment in downwind Class I areas.'' *Id.* at 35722. EPA's 2017 revisions to the RHR did not disturb this conclusion. *See* 82 FR 3094 (July 10, 2017).

New York has no Class I areas within its borders. For the second implementation period, MANE–VU performed technical analyses [35] to help inform source and state-level contributions to visibility impairment and the need for interstate consultation. MANE–VU used the results of these analyses to determine which states' emissions ''have a high likelihood of affecting visibility in MANE–VU's Class I areas.'' [36] Similar to metrics used in the first implementation period,[37] MANE–VU used a greater than 2 percent of sulfate plus nitrate emissions contribution criteria to determine whether emissions from individual jurisdictions within the region affected visibility in any Class I areas. The MANE–VU analyses for the second implementation period used a combination of data analysis techniques, including emissions data dispersion modeling. Although many of the analyses focused only on SO_2 emissions and resultant particulate sulfate contributions to visibility impairment, some also incorporated NO_X emissions to estimate particulate nitrate contributions.

One MANE–VU analysis used for contribution assessment was CALPUFF

[33] NYSDEC supplemented its SIP submission on February 16, 2022.

[34] EPA determined that ''there is more than sufficient evidence to support our conclusion that emissions from each of the 48 contiguous states and the District of Columbia may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area.'' (64 FR 35721, July 1, 1999). Hawaii, Alaska, and the U.S. Virgin Islands must also submit regional haze SIPs because they contain Class I areas.

[35] The contribution assessment methodologies for MANE–VU Class I areas are summarized in appendix C of the NY RH 2nd Implementation Period SIP submission, ''Selection of States for MANE–VU Regional Haze Consultation (2018).''

[36] Id.

[37] *See* docket EPA–R02–OAR–2012–0296 for MANE–VU supporting materials.

air dispersion modeling.[38] The CALPUFF model was used to estimate sulfate and nitrate formation and transport in MANE–VU and nearby regions from large electric generating unit (EGU) point sources and other large industrial and institutional sources in the eastern and central United States. Information from the initial round of CALPUFF modeling was collected on the 444 electric generating units (EGUs) that were determined to warrant further scrutiny based on their emissions of SO_2 and NO_X. The list of EGUs was based on enhanced ''Q/d'' analysis [39] that considered recent SO_2 emissions in the eastern United States and an analysis that adjusted previous 2002 MANE–VU CALPUFF modeling by applying a ratio of the 2011 to 2002 SO_2 emissions. This list of sources was then enhanced by including the top five SO_2 and NO_X emission sources for 2011 for each state included in the modeling domain. A total of 311 EGU stacks (as opposed to individual units) were included in the CALPUFF modeling analysis. Initial information was also collected on the 50 industrial and institutional sources that, according to the 2011 Q/d analysis, contributed the most to visibility impacts in each Class I area. The ultimate CALPUFF modeling run included a total of 311 EGU stacks and 82 industrial facilities. The summary report for the CALPUFF modeling included the top 10 most impacting EGUs and the top five most impacting industrial/institutional sources for each Class I area and compiled those results into a ranked list of the most impacting EGUs and industrial sources at MANE–VU Class I areas.[40]

New York had three EGUs and four industrial sources that were included in the MANE–VU CALPUFF modeling.[41] Somerset Operating Company, Oswego Harbor Power, and Cayuga Operating Company are the three EGU facilities identified by the modeling. Lafarge Building Materials Inc., Finch Paper LLC, International Paper Ticonderoga Mill, and Kodak Park Division are the four industrial/institutional (ICI) facilities identified by the modeling.

In its submittal, New York states that it has adopted revisions to 6 NYCRR Part 251, Carbon Dioxide Performance Standards for Major Electric Generating Facilities ''to require all power plants in New York to meet new emissions limits for carbon dioxide (CO_2).'' As a result of these revisions, New York's submittal indicates that Somerset Operating Company ceased operations after submitting their deactivation plan to New York Independent System Operator (NYISO). In its February 16, 2022, supplement to its submittal, New York stated that Somerset Operating Company retired its primary units on March 31, 2020 and that it was being demolished.[42] New York's submittal addresses Oswego Harbor Power as follows. Oswego Harbor Power Emission Unit U00006 consists of one steam generator, Unit 6, that provides steam to a turbine capable of producing 850 MW net of electricity. This unit can produce up to 245 MW by firing natural gas. Natural gas or distillate oil may be used to ignite the boiler during startup. The oil must have a sulfur content no greater than 0.5% by weight to be used in this unit. Unit 6 is subject to 40 CFR part 60, subpart D. Particulate emissions are controlled by an electrostatic precipitator (S006C). NO_X emissions are controlled by over-fire air and flue gas recirculation. SO_2 emissions in 2017 were 100.9 tons, compared to 373.4 tons in 2011. NO_X emissions from Oswego Harbor Power were 59.7 tons, a decrease from 101.6 tons in 2011. New York's submittal indicates that Cayuga Generating Station is no longer operating, but still retains its State Administrative Procedure Act (SAPA) [43] extended permit.

International Paper Ticonderoga Mill submitted an updated RACT analysis in September 2016 which set an emission limit of 0.23 lb NO_X/MMBtu on the power boiler that burns natural gas. RED-Rochester is located in the old Kodak Park and has converted coal-fired boiler #44 to natural gas with #2 fuel oil backup. Boiler #44 is rated at 694 MMBtu/hr on natural gas and 670 MMBtu/hr on No. 2 oil. The final conversion scenario decommissioned three boilers: [44] the previously shut down 640 MBTU/hr coal fired Boiler 41, the 670 MBTU/hr coal fired Boiler 42 in March 2018, and the 640 MBTU/hr coal-fired Boiler 43 in March 2018. Four operating 98 MBTU/hr #6 fuel oil fired package boilers have been retained as limited use boilers. New York also asserts that the new natural gas boilers will significantly reduce both NO_X and SO_2 emissions compared to historical and NPS estimated emissions from the coal boilers. Finally, Lafarge Building Materials, Inc. and Finch Paper, LLC were selected for further analysis as part of the long-term strategy and will be discussed in a later section of this proposed rulemaking.

The second MANE–VU contribution analysis used a meteorologically weighted Q/d calculation to assess states' contributions to visibility impairment at MANE–VU Class I areas.[45] This analysis focused predominantly on SO_2 emissions and used the quantity of cumulative SO_2 emissions from a source for the variable of ''Q,'' and the distance of the source or state to the IMPROVE monitor receptor at a Class I area as ''d.'' The result is then multiplied by a constant (C_i), which is determined based on the prevailing wind patterns. MANE–VU selected a meteorologically weighted Q/d analysis as an inexpensive initial screening tool that could easily be repeated to determine which states, sectors, or sources have a larger relative impact and warrant further analysis. MANE–VU's analysis estimated New York's maximum sulfate contribution was 4.66% at any Class I area based on the maximum daily impact. The largest impacts from New York's sulfate contributions were to Lye Brook Wilderness, Vermont. Although MANE–VU did not originally estimate nitrate impacts, the MANE–VU Q/d analysis was extended to account for nitrate contributions from NOx emissions and to approximate the nitrate impacts from area and mobile sources. MANE–VU therefore developed a ratio of nitrate to sulfate impacts based on the previously described CALPUFF modeling and applied those to the sulfate Q/d results in order to derive nitrate contribution estimates. Several states did not have CALPUFF nitrate to sulfate ratio results, however, because there were no point sources modeled with CALPUFF.

In order to develop a final set of contribution estimates, MANE–VU weighted the results from both the Q/d and CALPUFF analyses. The MANE–VU mass-weighted sulfate and nitrate contribution results were reported for the MANE–VU Class I areas (the Q/d summary report included results for

[38] *See* page 6 of Appendix K of the NY RH 2nd Implementation Period SIP submission.

[39] ''Q/d'' is emissions (Q) in tons per year, typically of one or a combination of visibility-impairing pollutants, divided by distance to a class I area (d) in kilometers. The resulting ratio is commonly used as a metric to assess a source's potential visibility impacts on a particular class I area.

[40] *See* Tables 34 and 35 of appendix K of the NY RH 2nd Implementation Period SIP submission.

[41] *See* appendix K, ''MANE–VU Source Contribution Modeling Report—CALPUFF Modeling of Large Electrical Generating Units and Industrial Sources (MANE–VU, April 2017)'' of the NY RH 2nd Implementation Period SIP submission.

[42] *See* docket document ''FLM List Facility Controls''

[43] N.Y. Comp. Codes R. & Regs. tit. 82.

[44] RED-Rochester LLC Air Title V Permit. Available at *https://www.dec.ny.gov/dardata/boss/afs/permits/826990012600001_r1.pdf.*

[45] The methodology used by MANE–VU for the meteorological weighted Q/d analysis can be found in Appendix O of the NY RH 2nd Implementation Period SIP submission, ''MANE–VU Updated Q/d*C Contribution Assessment.''

several non-MANE–VU areas as well). If a state's contribution to sulfate and nitrate concentrations at a particular Class I area was 2 percent or greater, MANE–VU regarded the state as contributing to visibility impairment in the area. According to MANE–VU's analyses, sources in New York have been found to contribute to visibility impairment in downwind mandatory Class I areas. These mandatory Class I areas are: Lye Brook Wilderness Area, Vermont; Brigantine Wildlife Refuge, New Jersey; Presidential Range-Dry River Wilderness Area and Great Gulf Wilderness Area, New Hampshire; Roosevelt-Campobello International Park, Acadia National Park and Moosehorn Wildlife Refuge, Maine; Dolly Sods Wilderness Area and Otter Creek Wilderness Area, West Virginia; and Shenandoah National Park, Virginia. The largest New York mass-weighted sulfate and nitrate contribution to any Class I area was 10.0% to Lye Brook Wilderness.[46] Thus, New York concludes in its regional haze submission, that it does contribute to visibility impairment in Class I Federal areas, and that its contributions ''while important, are not the most significant, with the contributions of several states [Midwest RPO and VISTAS] outside the MANE–VU region being significantly larger than New York's.'' [47]

As explained above, the EPA concluded in the 1999 RHR that ''all [s]tates contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area,'' (64 FR 35721, July 1, 1999), and this determination was not changed in the 2017 RHR. Critically, the statute and regulation both require that the cause-or-contribute assessment consider all emissions of visibility-impairing pollutants from a state, as opposed to emissions of a particular pollutant or emissions from a certain set of sources. Consistent with these requirements, the 2019 Guidance makes it clear that ''all types of anthropogenic sources are to be included in the determination'' of whether a state's emissions are reasonably anticipated to result in any visibility impairment. 2019 Guidance at 8.

The EPA notes that the screening analyses on which MANE–VU relied are useful for certain purposes. MANE–VU used information from its technical analysis to rank the largest contributing states to sulfate and nitrate impairment in five Class I areas within MANE–VU states and three additional, nearby Class I areas.[48] The rankings were used to determine upwind states that were deemed important to include in state-to-state consultation (based on an identified impact screening threshold). Additionally, large individual source impacts were used to address specific components of MANE–VU's control analysis ''Asks'' [49] of states and sources within and upwind of MANE–VU.[50] The EPA finds the nature of the analyses generally appropriate to support decisions on states with which to consult. However, we have cautioned that source selection methodologies that target the largest regional contributors to visibility impairment across multiple states may not be reasonable for a particular state if it results in few or no sources being selected. 2021 Clarifications Memo at 3.

Further, the EPA reviewed the adequacy of MANE–VU's analysis and determinations regarding New York's contribution to visibility impairment at out-of-state Class I areas. The MANE–VU technical work focuses on the magnitude of visibility impacts from certain New York emissions on nearby Class I areas. However, the analyses did not account for all emissions and all components of visibility impairment (*e.g.,* primary PM emissions, and impairment from fine PM, elemental carbon, and organic carbon). In addition, Q/d analyses with a relatively simplistic accounting for wind trajectories and CALPUFF applied to a very limited set of EGUs and major industrial sources of SO_2 and NO_X are not scientifically rigorous tools capable of evaluating contribution to visibility impairment from *all* emissions in a state. Although New York noted that the contributions from several states outside the MANE–VU region are significantly larger than its own, we again clarify that each state is obligated under the CAA and Regional Haze Rule to address regional haze visibility impairment resulting from emissions from within the state, irrespective of whether another state's contribution is greater. See 2021 Clarifications Memo at 3. Additionally, we note that the 2 percent or greater sulfate-plus-nitrate threshold used to determine whether New York emissions contribute to visibility impairment at a particular Class I area may be higher than what EPA believes is an ''extremely low triggering threshold'' intended by the statute and regulations. In sum, based on the information provided, emissions from New York contribute to visibility impairment in Class I areas in Maine, New Jersey, New Hampshire, Vermont, Virginia, and West Virginia.[51] The EPA generally agrees with this conclusion. However, due to the low triggering threshold implied by the Rule and the lack of rigorous modeling analyses, we do not necessarily agree with the level of the State's 2% contribution threshold as a general matter.

Regardless, we note that New York did determine that sources and emissions within the State contribute to visibility impairment at out-of-state Class I areas. Furthermore, New York took part in the emission control strategy consultation process as a member of MANE–VU. As part of that process, MANE–VU developed a set of emissions reduction measures identified as being necessary to make reasonable progress in the five MANE–VU Class I areas. MANE–VU refers to each component of its overall strategy as an ''Ask'' of participating states. This strategy consists of six ''Asks'' for states within MANE–VU, and five Asks for states outside the region that were found to impact visibility at Class I areas within MANE–VU.[52] New York's submission discusses each of the Asks and explains why or why not each is applicable and how it has complied with the relevant components of the emissions control strategy MANE–VU has laid out for its states. New York worked with MANE–VU to determine potential reasonable measures that could be implemented by 2028, considering the cost of compliance, the time necessary for compliance, the energy and non-air quality

[46] *See* Pennsylvania's contribution of 20.0% in Table 10–1, ''Percent Mass-Weighted Sulfate and Nitrate Due to Emissions from Listed States,'' of the NY RH 2nd Implementation Period SIP submittal.

[47] *See* Section 10.2.2 of the NY RH 2nd Implementation Period SIP submittal and Appendix C: ''Selection of States for MANE–VU Regional Haze Consultation (2018).''

[48] The Class I areas analyzed were Acadia National Park in Maine, Brigantine Wilderness in New Jersey, Great Gulf Wilderness in New Hampshire, Lye Brook Wilderness in Vermont, Moosehorn Wilderness in Maine, Shenandoah National Park in Virginia, James River Face Wilderness in Virginia, and Dolly Sods/Otter Creek Wildernesses in West Virginia.

[49] As explained more fully in Section IV.E.a, MANE–VU refers to each of the components of its overall strategy as an ''Ask ''of its member states.

[50] The MANE–VU consultation report (Appendix E of the NY RH 2nd Implementation Period SIP submission) explains that ''[t]he objective of this technical work was to identify states and sources from which MANE–VU will pursue further analysis. This screening was intended to identify which states to invite to consultation, not a definitive list of which states are contributing.''

[51] *See* Section 1.4, ''Mandatory Class I Federal Areas Affected by New York State'' of the NY RH 2nd Implementation Period SIP submission.

[52] *See* appendix H of the NY RH 2nd Implementation Period SIP submission, ''Statement of the Mid-Atlantic/Northeast Visibility Union (MANE–VU) Concerning a Course of Action within MANE–VU toward Assuring Reasonable Progress for the Second Regional Haze Implementation Period (2018–2028), (August 2017).''

environmental impacts, and the remaining useful life of any potentially affected sources. Although we have concerns regarding some aspects of MANE–VU's technical analyses supporting states' contribution determinations as a general matter, we propose to find that New York has nevertheless satisfied the applicable requirements for making reasonable progress towards natural visibility conditions in Class I areas that may be affected be emissions from the state.

Specifically, as discussed in further detail below, the EPA is proposing to find that New York has submitted a regional haze plan that meets the requirements of 40 CFR 51.308(f)(2) related to the development of a long-term strategy.

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires states to determine the following for ''each mandatory Class I Federal area located within the State'': baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

Because New York does not have any Class I areas within its borders, it is not required to calculate baseline, current, and natural visibility conditions, or to calculate a URP.[53] Thus, the EPA finds that the requirements under this section have been satisfied by New York.

E. Long-Term Strategy for Regional Haze

Each state having a Class I area within its borders or emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress towards the national visibility goal. CAA 169A(b)(2)(B). As explained in the Background section of this notice, reasonable progress is achieved when all states contributing to visibility impairment in a Class I area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress. 40 CFR 51.308(f)(2)(i). Each state's long-term strategy must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). All new (*i.e.,* additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the long-term strategy. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, that source's existing measures are necessary to make reasonable progress, and must therefore be included in the SIP, unless the state can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be in the long-term strategy. In developing its long-term strategies, states must also consider the five additional factors in 40 CFR 51.308(f)(2)(iv). As part of its reasonable progress determination, the state must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.,* subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. 40 CFR 51.308(f)(2)(iii).

The following subsections summarize how New York's SIP submission addressed the requirements of 40 CFR 51.308(f)(2)(i). As explained above, New York relied on MANE–VU's technical analyses and framework (*i.e.,* the Asks), in addition to their review of sources identified by FLMs, to form the basis of its long-term strategy to address reasonable progress. Thus, section IV.E.a., ''New York's Response to the Six MANE–VU Asks,'' describes MANE–VU's development of the six Asks and how New York addressed each. Section IV.E.b., ''The EPA's Evaluation of New York's Response to the Six MANE–VU Asks and Compliance with 40 CFR 51.308(f)(2)(i),'' then discusses EPA's evaluation of New York's SIP revision with regard to the same.

a. New York's Response to the Six MANE–VU Asks

States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under 40 CFR 51.308(f). Where an RPO has performed source selection and/or four-factor analyses (or considered the five additional factors in 40 CFR 51.308(f)(2)(iv)) for its member states, those states may rely on the RPO's analyses for the purpose of satisfying the requirements of 40 CFR 51.308(f)(2)(i) so long as the states have a reasonable basis to do so and all state participants in the RPO process have approved the technical analyses. 40 CFR 51.308(f)(3)(iii). States may also satisfy the requirement of 40 CFR 51.308(f)(2)(ii) to engage in interstate consultation with other states that have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area under the auspices of intra- and inter-RPO engagement.

New York is a member of the MANE–VU RPO and participated in the RPO's regional approach to developing a strategy for making reasonable progress towards the national visibility goal in the MANE–VU Class I areas. MANE–VU's strategy includes a combination of (1) measures for certain source sectors and groups of sectors that the RPO determined were reasonable for states to pursue, and (2) a request for member states to conduct four-factor analyses for individual sources that it identified as contributing to visibility impairment. As described above, MANE–VU refers to each of the components of its overall strategy as an Ask of its member states. On August 25, 2017, the Executive Director of MANE–VU, on behalf of the MANE–VU states and Tribal nations, signed a statement that identifies six emission reduction measures that comprise the Asks for the second implementation period.[54] The Asks were ''designed to identify reasonable emission reduction strategies that must be addressed by the states and Tribal nations of MANE–VU through their regional haze SIP updates.'' [55] The statement explains that ''[i]f any State cannot agree with or complete a Class I

[53] While New York noted that it was not required to comply with 40 CFR 51.308(f)(1), elsewhere in its SIP submission (*See* section 5) it included visibility metrics of nearby Class I areas, which were taken from, ''Mid-Atlantic/Northeast U.S. Visibility Data 2004–2016 (2nd RH SIP Metrics) (MANE–VU, August 2018).''

[54] *See* appendix H of the NY RH 2nd Implementation Period SIP submission, ''Statement of the Mid-Atlantic/Northeast Visibility Union (MANE–VU) States Concerning a Course of Action Within MANE–VU Toward Assuring Reasonable Progress for the Second Regional Haze Implementation Period (2018–2028)'' at 1, August 25, 2017.

[55] Id.

State's Asks, the State must describe the actions taken to resolve the disagreement in the Regional Haze SIP.'' [56]

MANE–VU's recommendations as to the appropriate control measures were based on technical analyses documented in the RPO's reports and included as appendices to or referenced in New York's regional haze SIP submission. One of the initial steps of MANE–VU's technical analysis was to determine which visibility-impairing pollutants should be the focus of its efforts for the second implementation period. In the first implementation period, MANE–VU determined that sulfates were the most significant visibility impairing pollutant at the region's Class I areas. To determine the impact of certain pollutants on visibility at Class I areas for the purpose of second implementation period planning, MANE–VU conducted an analysis comparing the pollutant contribution on the clearest and most impaired days in the baseline period (2000–2004) to the most recent period (2012–2016) [57] at MANE–VU and nearby Class I areas. MANE–VU found that while SO_2 emissions were decreasing and visibility was improving, sulfates still made up the most significant contribution to visibility impairment at MANE–VU and nearby Class I areas. According to the analysis, NO_X emissions have begun to play a more significant role in visibility impacts in recent years as SO_2 emissions have decreased. The technical analyses used by New York are included in their submission to the EPA and are as follows:

- 2016 Updates to the Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas (Appendix M);
- 2016 MANE–VU Source Contribution Modeling Report—CALPUFF Modeling of Large Electrical Generating Units and Industrial Sources April 4, 2017 (Appendix K);
- Regional Haze Metrics Trends and HYSPLIT Trajectory Analyses. May 2017. (Appendix L);
- Selection of States for MANE–VU Regional Haze Consultation (2018) (MANE–VU Technical Support Committee. September 2017. (Appendix C); and

Furthermore, technical analyses New York's submission also references, but New York did not include within its submission, include the following documents:

- Technical Support Document for the 2011 Ozone Transport Commission/Mid-Atlantic Northeastern Visibility Union Modeling Platform (Ozone Transport Commission, September 2018);
- Impact of Wintertime SCR/SNCR Optimization on Visibility Impairing Nitrate Precursor Emissions (prepared by the MANE–VU Technical Support Committee, November 20, 2017); and
- Technical Memorandum: Four Factor Data Collection (prepared by MANE–VU Technical Support Committee March 30, 2017).

To support development of the Asks, MANE–VU gathered information on each of the four factors for six source sectors it determined, based on an examination of annual emission inventories, ''had emissions that were reasonabl[y] anticipated to contribute to visibility degradation in MANE–VU:'' electric generating units (EGUs), industrial/commercial/institutional boilers (ICI boilers), cement kilns, heating oil, residential wood combustion, and outdoor wood combustion.[58] MANE–VU also collected data on individual sources within the EGU, ICI boiler, and cement kiln sectors.[59] Information for the six sectors included explanations of technically feasible control options for SO_2 or NO_X, illustrative cost-effectiveness estimates for a range of model units and control options, sector-wide cost considerations, potential time frames for compliance with control options, potential energy and non-air-quality environmental impacts of certain control options, and how the remaining useful lives of sources might be considered in a control analysis.[60] Source-specific data included SO_2 emissions [61] and existing controls [62] for certain existing EGUs, ICI boilers, and cement kilns. MANE–VU considered this information on the four factors as well as the analyses developed by the RPO's Technical Support Committee when it determined specific emission reduction measures that were found to be reasonable for certain sources within two of the sectors it had examined—EGUs and ICI boilers. The Asks were based on this analysis and looked to either optimize the use of existing controls, have states conduct further analysis on EGU or ICI boilers with considerable visibility impacts, implement low sulfur fuel standards, or lock-in lower emission rates.

MANE–VU Ask 1 is ''ensuring the most effective use of control technologies on a year-round basis'' at EGUs with a nameplate capacity larger than or equal to 25 megawatts (MW) with already installed NO_X and/or SO_2 controls.[63] In its submission, New York explained that the control limits required by its Reasonably Available Control Technology (RACT) rule, SIP-approved 6 NYCRR subpart 227–2, ''Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_X),'' include year-round emission limits of NO_X for EGUs with a nameplate capacity larger than or equal to 25 MW.[64] Regarding control of SO_2 emissions, under 6 NYCRR subpart 225, ''Fuel Consumption and Use,'' which was last approved by the EPA on August 23, 2018 (*See* 83 FR 42589), any stationary combustion installation that fires solid or liquid fuels is required to meet the sulfur-in-fuel standards of the subpart.[65] Additionally, New York explained that the SIP-approved 6 NYCRR Part 245, ''CSAPR SO_2 Group 1 Trading Program'' (*See* 84 FR 38878), will distribute Federal SO_2 CSAPR allowances to EGUs for the purpose of reducing $PM_{2.5}$ in New York State and downwind states by limiting emissions of SO_2 year-round from fossil fuel-fired EGUs. Thus, based on the information regarding SIP-approved 6 NYCRR Parts 225, 227, and 245, New York explains that its operating permits for EGUs, including

[56] Id.

[57] The period of 2012–2016 was the most recent period for which data was available at the time of analysis.

[58] MANE–VU Four Factor Data Collection Memo at 1, March 30, 2017, *available at https://otcair.org/MANEVU/Upload/Publication/Reports/Four-Factor%20Data%20Collection%20Memo%20-%20170314.pdf.* The six sectors were identified in the first implementation period pursuant to MANE–VU's contribution assessment; MANE–VU subsequently updated its information on these sectors for the second implementation period.

[59] *See* appendix M of the NY RH 2nd Implementation Period SIP submission, ''2016 Updates to the Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas, Jan. 31, 2016.''

[60] Id.

[61] Table 1 of MANE–VU's ''Four Factor Data Collection Memo'' March 30, 2017 contains 2011 SO_2 data from specific sources.

[62] The ''Status of the Top 167 Electric Generating Units (EGUs) that Contributed to Visibility Impairment at MANE–VU Class I Areas during the 2008 Regional Haze Planning Period,'' July 25, 2016, reviews the existing and soon to be installed, at the time of the report, emission controls at individual EGU sources that were a part of the MANE–VU Ask from the first implementation period. Available at: *https://otcair.org/MANEVU/Upload/Publication/Reports/Status%20of%20the%20Top%20167%20Stacks%20from%20the%202008%20MANE-VU%20Ask.pdf.*

[63] *See* appendix H of the NY RH 2nd Implementation Period SIP submission.

[64] *See* NYCRR Part 227–2, ''Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_X),'' which applies to all EGUs and sets emission limits that can only be achieved with year-round operation of controls.

[65] New York submitted additional revisions to 6 NYCRR 225–1. The EPA proposed approval. 87 FR 64428 (October 25, 2022).

those which are for EGUs with a nameplate capacity larger than or equal to 25 MW, require that controls be run year-round for both NO_X and SO_2 by setting emission limits in permits that reflect the emission levels when the controls are in operation to ensure the most effective use of control technologies. New York therefore concluded that it is meeting Ask 1.

MANE–VU Ask 2 consists of a request that states ''perform a four-factor analysis for reasonable installation or upgrade to emissions controls'' for specified sources. MANE–VU developed its Ask 2 list of sources for analysis by performing modeling and identifying facilities with the potential for 3.0 inverse megameters (Mm^{-1}) or greater impacts on visibility at any Class I area in the MANE–VU region. Finch Paper and Lafarge Building Materials are the two sources in New York State that were identified by Ask 2.

In section 10.6.3, ''Significant Visibility Impact Emission Sources,'' of New York's submittal, an analysis addressing each of the four-factors is provided for Finch Paper and Lafarge Building Materials. New York's analysis for Finch Paper determined that the phased-in switch from No. 6 fuel oil to natural gas in their boilers (completed by the end of 2015) and the boiler and combustion tune-ups, consistent with 40 CFR part 63 subpart DDDDD Boiler MACT Rule (especially for boilers 4 and 5), were adequate upgrades to control emissions. Additionally, New York's analysis for Lafarge Building Materials determined that major renovations which included the replacement of the facility's two wet process kilns with a dry process kiln and the installation of a wet scrubber and Selective Non-Catalytic Reduction (SNCR) to the kiln system to be adequate upgrades to control emissions. Both facilities have undergone major updates since the 2011 emissions data was collected, which included the implementation of emission control strategies, resulting in no additional time necessary to comply. Additionally, both facilities have SIP-approved controls installed that limit their potential contribution to visibility impairment.

In addition to the analyses conducted for Finch Paper and Lafarge Building Materials, New York provided information regarding controls and emissions at the facilities within New York that were identified by the FLMs during consultation. The following discussion is related to information New York provided pertaining to FLM concerns.

The Anchor Glass Container Corporation facility in Elmira is subject to a 2018 Consent Decree with EPA that contains a compliance schedule for controls to be implemented on the facility's two furnaces (Elmira 1 and Elmira 2). New York indicated that both furnaces will be rebuilt and will burn oxyfuel or install a selective catalytic reduction (SCR) unit to minimize NO_X emissions. These controls were implemented for Elmira 1 in 2021. Additionally, a scrubber system and an electrostatic precipitator (ESP) were installed on Elmira 1 in 2021. Elmira 2 underwent batch optimization in 2021 and will burn oxyfuel or install a selective catalytic reduction (SCR) by December 31, 2029.

Moreover, New York indicated that Morton Salt Division converted its boilers from firing coal to natural gas. That said, a new natural gas 148 MMBtu/hr steam boiler and eight small direct fired building heaters replaced an existing 138 MMBtu/hr coal boiler and an existing 92.5 MMBtu/hr natural gas boiler. According to the State, the new natural gas 148 MMBtu/hr steam boiler is subject to the relevant presumptive RACT emission limit of 0.06 pounds NO_X per million Btu burning only natural gas. Notably, this conversion reduced emissions below the major source threshold and, as a result, the facility's Title V permit was replaced by an Air State Facility permit.[66]

The Bowline Point Generating Station switched to natural gas but will be allowed to burn oil as a backup. Additionally, Lehigh Northeast Cement operates with a dry process, which has fewer emissions than wet processes, and a selective noncatalytic reduction (SNCR) began operation July 2012. Notably, Northport Power Station burned much less #6 high sulfur fuel oil in 2016 and 2017 and, as a result of 6 NYCRR 225–1, ''Sulfur-in-fuel limitations,'' the sulfur content of #6 fuel oil used at the facility has decreased providing for an additional reduction of SO_2 emissions over the past years.

Furthermore, New York claims that water injection, dry low NO_X burners, and SCR are used to control NO_X emissions, along with the use of an oxidation catalyst to control CO and VOC emissions at the Con Edison-East River Generating Station facility. At Ravenswood Generating Station, dry low NO_X burners and SCR are used to control NO_X emissions from unit U–CC001. In addition, emissions of VOC and CO are controlled using an oxidation catalyst and New York only allows distillate oil to be burned for 720 hours per year. The Globe Metallurgical, Inc., plant shutdown indefinitely due to market conditions in December 2018. Also, the Roseton Generating Station exclusively burns natural gas during the ozone season and burns natural gas and No. 6 fuel oil during the remainder of the year. PM emission from Units 1 & 2 are controlled with a mechanical dust collector and NO_X emissions are controlled with ''Burners Out Of Service'' (BOOS) controls, oil steam atomization, and windbox flue gas recirculation at the Roseton facility.

Moreover, Cargill Salt Co.'s Watkins Glen Plant shutdown four boilers (two coal-fired and two natural gas-fired) in 2013, totaling 228 MMBtu/hr heat input capacity. The four boilers that were shutdown were replaced by one 181 MMBtu/hr natural gas-fired boiler, equipped with a low-NO_X burner. The replacement boiler is subject to a 0.1 lbs NO_X/MMBtu heat input limit that is monitored using a Continuous Emissions Monitoring System (CEMS), and as a result of these changes, the plant is no longer considered a major facility subject to a Title V permit. Norlite Corporation has had its permit emission limits reduced from 61 lb/hr of NO_X and 30 lb/hr of SO_2 in 2011, to 22.4 lb/hr of NO_X and 28 lb/hr of SO_2. As a result, NO_X and SO_2 emissions at Norlite decreased from 80.7 tons in 2011 to 78.8 tons in 2017 and 124.9 tons in 2011 to 60.4 tons in 2017 respectively. New York therefore concluded that it satisfies Ask 2.

Ask 3 is for each MANE–VU state to pursue an ultra low-sulfur fuel oil standard if it has not already done so in the first implementation period.[67] The Ask includes percent by weight standards for #2 distillate oil (0.0015% sulfur by weight or 15 ppm), #4 residual oil (0.25–0.5% sulfur by weight), and #6 residual oil (0.3–0.5% sulfur by weight). New York explains that it has already implemented a low-sulfur fuel standard and does not need to take further action by 2028. In 2018, the EPA approved into the New York SIP New York's regulation to reduce the sulfur content of fuel oil, 6 NYCRR 225–1. 83 FR 42589 (Aug. 23, 2018). The final rule limited firing of all residual oil to a range of 0.3 to 0.5% sulfur by weight depending on the area and a 15 ppm limit (0.0015% sulfur by weight) on #2 oil starting July 1, 2014. The ultra low-sulfur fuel oil regulations in New York are a part of its

[66] *See* Air State Facility permit at: *https://extapps.dec.ny.gov/data/dar/afs/permits/956320000700045_r0.pdf.*

[67] MANE–VU's analysis, which New York relied on, is found in ''Appendix M–2016 Updates to the Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas.''

long-term strategy. New York therefore concluded that it is meeting Ask 3.

MANE–VU Ask 4 requests states to update permits to ''lock in'' lower emissions rates for NO_X, SO_2, and PM at emissions sources larger than 250 million British Thermal Units (MMBtu) per hour heat input that have switched to lower emitting fuels. According to New York's SIP submission, New York updates permits for large point emission sources every five years for Title V facilities, every ten years for Air State Facilities, and whenever both Title V and Air State facilities make a major update. New York explains that it will also require the use of lower emitting fuel in the permits when these permits are updated. Additionally, New York's submittal indicates that it has adopted 6 NYCRR part 251, ''CO2 Performance Standards for Major Electric Generating Facilities,'' which requires all power plants in New York to meet new emissions limits for carbon dioxide (CO_2) and will end the use of coal in New York State power plants. Although this state regulation has not been submitted to the EPA for incorporation into New York's SIP, it is expected that emissions of visibility impairing pollutants will decrease once power plants cease the burning of coal. In addition, New York has stringent SIP-approved limits for coal operated units in its 6 NYCRR subpart 227–2, ''RACT for Major Facilities of NO_X provisions.'' This rule limits presumptive NO_X emission limits to the range of 0.08 to 0.20 pounds per million BTU (lb/MMBtu), depending upon the type of fuel and boiler configuration, for sources with emissions larger than 250 million British Thermal Units (MMBtu) per hour heat input. New York therefore concluded it is meeting Ask 4.

Ask 5 requests that states ''control NO_X emissions for peaking combustion turbines [68] that have the potential to operate on high electric demand days'' by either (1) meeting NO_X emissions standards specified in the Ask for turbines that run on natural gas and for fuel oil, (2) performing a four-factor analysis for reasonable installation of or upgrade to emission controls, or (3) obtaining equivalent emission reductions on high electric demand days.[69] The Ask requests states to strive for NO_X emission standards of no greater than 25 ppm for natural gas and 42 ppm for fuel oil, or at a minimum, NO_X emission standards of no greater than 42 ppm for natural gas and 96 ppm for fuel oil. New York's submission states that it adopted 6 NYCRR subpart Part 227–3 [70] on December 11, 2019, to, among other things, limit emissions from simple cycle combustion turbines (peaking units) that operate on high electric demand days.[71] The rule limits NO_X emission rates to 25 ppm at 15% O_2 for natural gas and 42 ppm at 15% O_2 for fuel oil. This rule helps to achieve ground-level ozone reductions and, as a result, is expected to improve visibility in mandatory Class I Federal areas in response to the Ask.[72] In 2021, the EPA approved into the New York SIP, New York's regulation (6 NYCRR 227–3) to limit emissions from simple cycle combustion turbines (peaking units) that operate on high electric demand days. 86 FR 43956 (Aug. 11, 2021). New York therefore concluded it is meeting Ask 5.

The last Ask for states within MANE–VU, Ask 6, requests states to report in their regional haze SIPs about programs that decrease energy demand and increase the use of combined heat and power (CHP) and other distributed generation technologies such as fuel cells, wind and solar. New York explains in its SIP submission that it ''is a leader in adopting energy efficiency and renewable energy programs and is always investigating additional programs that will decrease use of fossil fuels in energy generation.'' [73] Section 10.3.7 of its SIP submission specifically cites the New York State Energy Research and Development Authority (NYSERDA) which provides funding and technical assistance in many programs that result in reductions of emissions of PM and its precursors as well as New York's Department of Public Service that also has current energy programs. New York therefore concluded it is meeting Ask 6.

[68] Peaking combustion turbine is defined for the purpose of this Ask as a turbine capable of generating 15 megawatts or more, that commenced operation prior to May 1, 2007, is used to generate electricity all or part of which is delivered to electric power distribution grid for commercial sale and that operated less than or equal to an average of 1,752 hours (or 20%) per year during 2014 to 2016.

[69] *See* appendix H of the NY RH 2nd Implementation Period SIP submission.

[70] New York submitted 6 NYCRR Subpart 227–3, ''Ozone Season Oxides of Nitrogen (NO_X) Emission Limits for Simple Cycle and Regenerative Combustion Turbines'' to the EPA on May 18, 2020.

[71] High electric demand days are days when higher than usual electrical demands bring additional generation units online, many of which are infrequently operated and may have significantly higher emissions rates of the generation fleet.

[72] *See* section 10.6.6 of the NY RH 2nd Implementation Period SIP submission.

[73] *See* section 10.6.7 of the NY RH 2nd Implementation Period SIP submission.

b. The EPA's Evaluation of New York's Response to the Six MANE–VU Asks and Compliance With 40 CFR 51.308(f)(2)(i)

The EPA is proposing to find that New York has satisfied the requirements of 40 CFR 51.308(f)(2)(i) related to evaluating sources and determining the emission reduction measures that are necessary to make reasonable progress by considering the four statutory factors. We are proposing to find that New York has satisfied the four-factor analysis requirement through its analysis and actions to address the MANE–VU Asks.

As explained above, New York relied on MANE–VU's technical analysis and framework (*i.e.,* the Asks), in addition to their review of sources identified by FLMs, to select sources and form the basis of its long-term strategy. MANE–VU conducted an inventory analysis to identify the source sectors that produced the greatest amount of SO_2 and NO_X emissions in 2011 and inventory data were also projected to 2018. Based on this analysis, MANE–VU identified the top-emitting sectors for each of the two pollutants, which for SO_2 include coal-fired EGUs, industrial boilers, oil-fired EGUs, and oil-fired area sources including residential, commercial, and industrial sources. Additionally, major-emitting sources of NO_X include on-road vehicles, non-road vehicles, and EGUs.[74] The RPO's documentation explains that ''[EGUs] emitting SO_2 and NO_X and industrial point sources emitting SO_2 were found to be sectors with high emissions that warranted further scrutiny. Mobile sources were not considered in this analysis because any ask concerning mobile sources would be made to EPA and not during the intra-RPO and inter-RPO consultation process among the states and tribes.'' [75] The EPA proposes to find that New York reasonably evaluated the two pollutants, SO_2 and NO_X, that currently drive visibility impairment within the MANE–VU region and that it adequately explained and supported its decision to focus on these two pollutants through its reliance on the MANE–VU technical analyses cited in its submission.

Section 51.308(f)(2)(i) requires states to evaluate and determine the emission reduction measures that are necessary to make reasonable progress by applying the four statutory factors to sources in a control analysis. As explained

[74] *See* appendix G of NY RH 2nd Implementation Period SIP submission, ''Contribution Assessment Preliminary Inventory Analysis'' (Oct. 10, 2016).

[75] *See* docket document ''Statement of MANE–VU Concerning a Course of Action by Federal Agencies for the 2nd pp.''

previously, the MANE–VU Asks are a mix of measures for sectors and groups of sources identified as reasonable for states to address in their regional haze plans. While MANE–VU formulated the Asks to be ''reasonable emission reduction strategies'' to control emissions of visibility impairing pollutants,[76] the EPA believes that Asks 2 and 3, in particular, engage with the requirement that states determine the emission reduction measures that are necessary to make reasonable progress through consideration of the four factors. As laid out in further detail below, the EPA is proposing to find that MANE–VU's four-factor analysis conducted to support the emission reduction measures in Ask 3 (ultra-low sulfur fuel oil Ask), in conjunction with New York's supplemental analysis and explanation of how it has complied with Ask 2 (perform four-factor analyses for sources with potential for ≥3 Mm^{-1} impacts) satisfy the requirement of 40 CFR 51.308(f)(2)(i). The emission reduction measures that are necessary to make reasonable progress must be included in the long-term strategy, *i.e.,* in New York's SIP. *See* 40 CFR 51.308(f)(2)(i).

As for Ask 1, New York concluded that it satisfied the ask because its SIP-approved regulations include year-round emission limits for EGUs with a nameplate capacity larger than or equal to 25 MW and because it already requires that controls be run year-round for both NO_X and SO_2 by setting emission limits in permits that reflect the emission levels when the controls are run. New York also explains in its response to public comments that it has very stringent sulfur in fuel regulations and that there are no coal units remaining in New York. New York's SIP approved (78 FR 41846, July 12, 2013) Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_X), limits emissions from boilers, combustion turbines, stationary internal combustion engines, and other combustion installations through the requirement of year-round controls. The New York RACT rule includes maximum NO_X emission limits of 0.2 pounds NO_X per million Btu for coal fuel types, 0.2 pounds NO_X per million Btu for gas/oil fuel types and 0.08 pounds NO_X per million Btu for gas only fuel types. Furthermore, New York's SIP-approved sulfur limits (6 NYCRR 225–1) include year-round limits. 83 FR 42589 (Aug. 23, 2018).[77] The final rule limited firing of all residual oil to a range of 0.3 to 0.5% sulfur by weight depending on the area and a 15 ppm limit (0.0015% sulfur by weight) on #2 oil. New York's SIP-approved SO_2 and NO_X RACT requirements in 6 NYCRR subpart 225–1 and 227–2 limit SO_2 and NO_X emissions from EGUs with a nameplate capacity larger than or equal to 25 MW consistent with the year-round operation of control technologies. Thus, the EPA proposes to find that New York reasonably concluded that it has satisfied Ask 1.

Ask 2 addresses the sources MANE–VU determined to have the potential for larger than, or equal to, 3 Mm^{-1} visibility impact at any MANE–VU Class I area; the Ask requests MANE–VU states to conduct four-factor analyses for the specified sources within their borders. This Ask explicitly engages with the statutory and regulatory requirement to determine reasonable progress based on the four factors; MANE–VU considered it ''reasonable to have the greatest contributors to visibility impairment conduct a four-factor analysis that would determine whether emission control measures should be pursued and what would be reasonable for each source.'' [78]

As discussed above, EPA does not necessarily agree that the 3.0 Mm^{-1} visibility impact is a reasonable threshold for source selection. The RHR recognizes that, due to the nature of regional haze visibility impairment, numerous and sometimes relatively small sources may need to be selected and evaluated for control measures in order to make reasonable progress. See 2021 Clarifications Memo at 4. As explained in the 2021 Clarifications Memo, while states have discretion to choose any source selection threshold that is reasonable, ''[a] state that relies on a visibility (or proxy for visibility impact) threshold to select sources for four-factor analysis should set the threshold at a level that captures a meaningful portion of the state's total contribution to visibility impairment to Class I areas.'' 2021 Memo at 3. In this case, the 3.0 Mm^{-1} threshold identified two sources in New York (and only 22 across the entire MANE–VU region), indicating that it may be unreasonably high. However, as explained in more detail below, we propose to find that New York's additional information and explanation indicates that the State in fact examined a reasonable set of sources and reasonably concluded that four-factor analyses for additional sources are not necessary because the outcome would be that no further emission reductions would be reasonable.

MANE–VU identified two large EGUs or other industrial sources of visibility impairing pollutants within New York, Finch Paper and Lafarge Building Materials. As detailed in New York's submission, the EPA notes that both facilities have undergone updates since the 2011 emissions data was collected and have installed SIP-approved controls that limit their potential maximum light extinction impact below 3.0 (Mm^{-1}) and well below their previous levels.

In section 10.6.3 of New York's submittal, New York addresses each of the four-factors for the controls that were implemented at Finch Paper after the 2011 emissions data was collected. New York also submitted a Source-Specific State Implementation Plan Revision (SSSR) for Finch Paper to the EPA on May 18, 2022.[79] The EPA proposed to approve the SSSR on January 19, 2024. *See* 89 FR 3620. Appendix A [80] of the SSSR contains Finch's technical evaluation of the currently permitted Reasonably Available Control Technology (RACT) for NO_X as well as NO_X RACT analysis dated 2019.

Finch's 2019 RACT analysis determined that six technologies were technically feasible for the power boilers. Those technologies include decommissioning/idling sources, fuel switch excusive to natural gas, third generation Low NO_X burners, Selective Catalytic Reduction (SCR), and purchasing electricity in lieu of generating it onsite. Finch then performed a cost analysis for third generation low NO_X burners, SCR, and purchasing electricity since it had already implemented the other identified control technologies. Finch's cost analysis of low NO_X burner resulted in a cost of $6,998 per ton NO_X removed and was considered economically infeasible. Finch's analysis of SCR resulted in a cost of $15,358 per ton NO_X removed and was considered economically infeasible. Finch's cost analysis of purchasing electricity instead of generating

[76] *See* Appendix H of NY RH 2nd Implementation Period SIP submission, ''Statement of MANEVU Concerning a Course of Action Within MANEVU Toward Assuring Reasonable Progress for the Second Implementation.''

[77] New York revised 6 NYCRR 225 and submitted such revisions to the EPA for approval into the SIP on August 28, 2020 and March 3, 2021. The EPA proposed approval on October 25, 2022. *See* 87 FR 66428.

[78] *See* Appendix E of NY RH 2nd Implementation Period SIP submission, ''MANE–VU Regional Haze Consultation Report.''

[79] *See* docket document ''Finch Source Specific State Implementation Plan Revision.''

[80] *See* docket document ''*COMPLETE SSSR.2022MAY18.Finch.2EPA20220524.pdf.*''

electricity onsite with No.4 boiler and No.5 boiler being capped, resulted in a cost of $5,774 per ton NO_X removed and was not considered a reasonable available control technology.

Appendix A of New York's SSSR submission [81] also includes Finch's reevaluation of the 2019 NO_X RACT analysis requirements (''2021 RACT analysis''), as part of the facility's Title V Operating Permit renewal application. In the 2021 RACT analysis, Finch compared the actual emission rates to established emission limits for each source type. For the Power Boilers, the calculated 30-day averages are within approximately 2–9% of the established limits for the power boilers. The emission testing results for the No.9 Wood Waste Boiler showed that the emissions are within approximately 10% of the established RACT limit. The Recovery Boilers emission limit was also evaluated, and Finch found that the actual emissions were within 4–19% of the established limits. Based on the 2021 RACT analysis, Finch determined that they are demonstrating ongoing compliance with the emission limits within a reasonable margin and proposed to retain the current NO_X emission limits as RACT.

As noted in the May 18, 2022 SSSR, Finch controls NO_X emissions from the site through the following means:

- Eliminated use of Boiler No. 1; Completed in 2015.
- A time-phased elimination of No. 6 fuel oil on all boilers since NO_X emissions are higher from the combustion of fuel oil than natural gas; Completed on December 31, 2015.
- Performance of boiler and combustion tune-ups consistent with 40 CFR part 63 subpart DDDDD, the Boiler MACT Rule; Completed the first tune-up in January 2016.
- A ''seasonal'' NO_X RACT emission limit for Boilers No. 2 through No. 5 as follows:
  - From April 15 to October 15, a NO_X emission limit of 0.225 lbs NO_X/MMBtu measured on a daily basis and reported as a 30-day average; [82]
  - From October 16 to April 14, an operating limit .275 pounds per million BTU on a 30-day average. The limit will not apply when the recovery boiler is not burning liquor or No. 9 is considered down. On those days the limit will be 0.378 pounds per million BTU on a 24-hour block average.[83]

According to the 2011 NEI data, Finch emitted 1,828.7 tons of NO_X and 309.6 tons of SO_2. Since then, Finch has implemented emission controls, as detailed in section 10.6.3 of New York's submittal, and consequently reduced its emissions. New York also provided a supplement which lists the controls at Finch Paper for SO_2, PM, and NO_X for the primary units at the facility.[84] In addition to the NO_X controls listed above, the facility controls SO_2 with a wet scrubber, the use of low-sulfur fuel, and packed bed tower, gas scrubber.[85] As a result, in 2020, Finch emitted 1,324.3 tons of NO_X and 138.9 tons of SO_2.[86]

In the first planning period, NYSDEC determined that the existing long wet kilns at Lafarge Building Materials Inc., were BART eligible. In January 2010, Lafarge entered a Consent Decree with the EPA [87] which contained a compliance schedule for the plant to either modernize the existing plant, retrofit the existing kilns with controls, or retire the kilns. Furthermore, Lafarge Building Materials underwent major renovations since the emission data was collected for the analysis, replacing its two wet process kilns with a dry process kiln. A wet scrubber was installed to control SO_2, as well as mercury, and a SNCR was installed to control NO_X from the kiln system.[88] With the controls started on May 16, 2017 for SO_2, mercury, and NO_X, Lafarge now meets the NSPS limits in 40 CFR part 60 subpart F. In section 10.6.3 of New York's submittal, New York addresses each of the four-factors for the controls that had been implemented at Lafarge after the 2011 emissions data was collected.

According to the 2011 NEI data, Lafarge Building Materials emitted 4,926.5 tons of NO_X and 9,570 tons of SO_2. Since then, Lafarge has implemented SIP-approved emission controls, as detailed in section 10.6.3 of New York's submittal, and consequently reduced its emissions. New York also provided a supplement which lists the controls at Lafarge for SO_2, PM, and NO_X for the primary units at the facility.[89] As a result, in 2020, Lafarge emitted 558.6 tons of NO_X and 58.7 tons of SO_2.[90]

The EPA therefore proposes to find that New York reasonably determined it has satisfied Ask 2. As explained above, we do not necessarily agree that a 3.0 Mm^{-1} threshold for selecting sources for four-factor analysis results in a set of sources the evaluation of which has the potential to meaningfully reduce the State's contribution to visibility impairment. MANE–VU's threshold identified only two sources in New York for four-factor analysis. However, in this particular case we propose to find that New York's additional information and explanation indicates that the State in fact examined a reasonable set of sources and reasonably concluded that four-factor analyses for these sources are not necessary because the outcome would be that no further emission reductions would be reasonable. EPA is basing this proposed finding on the State's examination of the two sources, the current emissions from and controls that apply to the facilities, controls in place at sources flagged by the FLMs, as well as New York's existing SIP-approved rules that control NO_X emissions.

Ask 3, which addresses the sulfur content of heating oil used in MANE–VU states, is based on a four-factor analysis that MANE–VU conducted regarding the heating oil sulfur reduction regulations contained in that Ask; specifically, for the control strategy of reducing the sulfur content of distillate oil to 15 ppm. The analysis started with an assessment of the costs of retrofitting refineries to produce 15 ppm heating oil in sufficient quantities to support implementation of the standard, as well as the impacts of requiring a reduction in sulfur content on consumer prices. The analysis noted that, as a result of previous EPA rulemakings to reduce the sulfur content of on-road and non-road-fuels to 15 ppm, technologies are currently available to achieve sulfur reductions and many refiners are already meeting this standard, meaning that the capital investments for further reductions in the sulfur content of heating oil are expected to be relatively low compared to costs incurred in the past. The analysis also examined, by way of example, the impacts of New York's existing 15 ppm sulfur requirements on heating oil prices and concluded that the cost associated with reducing sulfur

[81] *Id.*

[82] *See* docket document ''Finch Air Title V Permit.''

[83] *Id.*

[84] *See* docket document ''FLM List Facility Controls.''

[85] *See* docket document ''Finch Air Title V permit.''

[86] *See* docket document ''FLM List Recent Emissions.''

[87] On January 21, 2010, EPA announced that the U.S. filed Clean Air Act settlements to reduce air emissions from container glass and Portland cement plants throughout the country. (Case 3:10–cv–000440JPG–CJP) This settlement includes Portland cement plants owned by Lafarge Company, including one located at Ravena, NY that has two wet kilns that New York has identified as BART-eligible.

[88] *See* docket document ''FLM List Facility Controls.''

[89] *See* docket document ''FLM List Facility Controls.''

[90] *See* docket document ''FLM List Recent Emissions.''

was relatively small in terms of the absolute price of heating oil compared to the magnitude of volatility in crude oil prices. It also noted that the slight price premium is compensated by cost savings due to the benefits of lower-sulfur fuels in terms of equipment life and maintenance and fuel stability. Consideration of the time necessary for compliance with a 15 ppm sulfur standard was accomplished through a discussion of the amount of time refiners had needed to comply with the EPA's on-road and non-road fuel 15 ppm requirement, and the implications existing refinery capacity and distribution infrastructure may have for compliance times with a 15 ppm heating oil standard. The analysis concluded that with phased-in timing for states that have not yet adopted a 15 ppm heating oil standard, there ''appears to be sufficient time to allow refiners to add any additional heating oil capacity that may be required.'' [91] The analysis further noted the beneficial energy and non-air quality environmental impacts of a 15 ppm sulfur heating oil requirement and that reducing sulfur content may also have a salutary impact on the remaining useful life of residential furnaces and boilers.[92]

The EPA proposes to find that New York reasonably relied on MANE–VU's four-factor analysis for a low-sulfur fuel oil regulation, which engaged with each of the factors and explained how the information supported a conclusion that a 15 ppm-sulfur fuel oil standard for fuel oils is reasonable. New York's SIP-approved ultra-low sulfur fuel oil rule [93] is consistent with Ask 3's sulfur content standards for the three types of fuel oils (distillate oil, #4 residual oil, #6 residual oil). EPA therefore proposes to find that New York reasonably determined that it has satisfied Ask 3.

New York concluded that no additional updates were needed to meet Ask 4, which requests MANE–VU states to pursue updating permits, enforceable agreements, and/or rules to lock-in lower emission rates for sources larger than 250 MMBtu per hour that have switched to lower emitting fuels. As previously explained, New York updates permits for large point sources every five years for Title V facilities, every ten years for Air State Facilities, and when Title V and Air State facilities make a major update. Under section 10.6.5. of its submission, New York indicated it would require the use of lower emitting fuel in such permits as they are updated. New York has also adopted NYCRR Part 251 which requires all power plants in New York to meet new emission limits for carbon dioxide.[94] This regulation, in addition to the SIP enforced NO_X limits in 6 NYCRR subpart 227–2, Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_X), satisfy Ask 4. Thus, the EPA proposes to find that New York reasonably determined it has satisfied Ask 4.

Ask 5 addresses NO_X emissions from peaking combustion turbines that have the potential to operate on high electric demand days. New York explains that it adopted NYCRR subpart 227–3, ''Ozone Season Oxides of Nitrogen (NO_X) Emission Limits for Simple Cycle and Regenerative Combustion Turbines,'' on December 11, 2019 that limits emissions from peaking combustion turbines [95] that operate on high electric demand days [96] and meets the emission rates contained in Ask 5. New York submitted Part 227–3 to the EPA on May 18, 2020 and it was approved on August 11, 2021. (86 FR 43956) The EPA therefore proposes to find that New York reasonably concluded that its existing regulations comply with Ask 5.

Finally, the EPA is proposing to find that New York has satisfied Ask 6's request to consider and report in its SIP measures or programs related to energy efficiency, cogeneration, and other clean distributed generation technologies. New York reports it is a leader in adopting energy efficiency and renewable energy programs and is always investigating additional programs that will decrease use of fossil fuels in energy generation. In the additional measures section of its submittal, section 10.3.7, New York explains that in July 2019, it passed the Climate Leadership and Community Protection Act (CLCPA). The CLCPA requires New York to achieve a carbon free electric system by 2040 and reduce greenhouse gas emissions 85% below 1990 levels by 2050, to expedite the transition to a clean energy economy. This law will drive investment in clean energy solutions such as wind, solar, energy efficiency and energy storage. The CLCPA targets investments to benefit disadvantaged communities, create tens of thousands of new jobs, improve public health and quality of life, and provide all New Yorkers with more robust clean energy choices. Additionally, with a focus on environmental justice, state agencies will invest at least 35% of clean energy program resources to benefit disadvantaged communities but will aim for a 40% investment. In addition, NYSDEC will, through the future adoption of regulations, drive an 85% reduction in greenhouse gas emissions by 2050, with an interim benchmark of 40% reduction in emissions by 2030 (both relative to 1990 levels). The Climate Action Council will develop a plan to offset remaining emissions through carbon capture or other technologies to create a carbon-neutral economy. Finally, a just transition working group will work to ensure that individuals working in conventional energy industries are provided with training and opportunities in the growing clean energy economy.

In sum, the EPA is proposing to find that, based on New York's participation in the MANE–VU planning process, how it has addressed each of the Asks, its initial submission and supplemental information regarding sources and emissions, and the EPA's assessment of New York's emissions and point sources, New York has complied with the requirements of 40 CFR 51.308(f)(2)(i). Specifically, MANE–VU Asks 2 and 3 engage with the requirement that states evaluate and determine that emission reduction measures that are necessary to make reasonable progress by considering the four statutory factors. MANE–VU selected two sources for New York to perform source-specific four-factor analyses pursuant to Ask 2. EPA is proposing to find that the state's approach is reasonable because the sources with the greatest modeled impacts on visibility have reduced their emissions or are subject to stringent control measures. New York's SIP-approved control measures, emissions inventory and supplemental information demonstrate that the sources of SO_2 and NO_X within the State that would be expected to contribute to visibility impartment have small emissions of NO_X and SO_2, are well controlled, or both. New York's SIP-approved sulfur limitations and use regulation limit the sulfur content of

[91] *Id.* at 8–7.

[92] *Id.* at 8–8.

[93] 6 NYCRR subpart 225–1: Fuel Composition and Use- Sulfur Limitations was approved into New York's SIP by the EPA on August 23, 2018. (83 FR 42589)

[94] *See* section 10.6.5 of the NY RH 2nd Implementation Period SIP submission.

[95] Peaking combustion turbine is defined for the purpose of this Ask as a turbine capable of generating 15 megawatts or more, that commenced operation prior to May 1, 2007, is used to generate electricity all or part of which is delivered to electric power distribution grid for commercial sale and that operated less than or equal to an average of 1,752 hours (or 20%) per year during 2014 to 2016.

[96] High electric demand days are days when higher than usual electrical demands bring additional generation units online, many of which are infrequently operated and may have significantly higher emissions rates of the generation fleet.

distillate oil, residual oil, and coal fired in stationary sources. New York's SIP-approved NO_X RACT regulations include stringent limits on boilers serving EGUs, stationary combustion turbines, ICI boilers and high electric demand day units. In addition, New York reviewed the source list provided by the FLMs and evaluated the controls and emissions at each of the facilities. Therefore, it is reasonable to assume that selecting additional point sources for four-factor analysis would not have resulted in additional emission reduction measures being determined to be necessary to make reasonable progress for the second implementation period.

Moreover, MANE–VU conducted a four-factor analysis to support Ask 3, which requests that states pursue ultra-low sulfur fuel oil standards to address SO_2 emissions. New York has done so and included its regulations in its SIP, thus satisfying the requirements that states determine the emission reduction measures that are necessary to make reasonable progress by considering the four factors, and that their long-term strategies include the enforceable emission limitations, compliance schedules, and other measures necessary to make reasonable progress. To the extent that MANE–VU and New York regard the measures in Asks 1 and 4 through 6 as being part of the region's strategy for making reasonable progress, we propose to find it reasonable for New York to address these Asks by pointing to existing measures that satisfy each.

c. Additional Long-Term Strategy Requirements

The consultation requirements of 40 CFR 51.308(f)(2)(ii) provides that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require states to consider the emission reduction measures identified by other states as necessary for reasonable progress and to include agreed upon measures in their SIPs, respectively. Section 51.308(f)(2)(ii)(C) speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress.

New York participated in and provided documentation of the MANE–VU intra- and inter-RPO consultation processes and addressed the MANE–VU Asks by providing information on the measures it has in place that satisfy each Ask.[97] MANE–VU also documented disagreements that occurred during consultation. MANE–VU noted in their Consultation Report that upwind states expressed concern regarding the analyses the RPO utilized for the selection of states for the consultation. MANE–VU agreed that these tools, as all models, have their limitations, but nonetheless deemed them appropriate. Additionally, there were several comments regarding the choice of the 2011 modeling base year. MANE–VU agreed that the choice of base year is critical to the outcome of the study. MANE–VU acknowledged that there were newer versions of the emission inventories and the need to use the best available inventory for each analysis. However, MANE–VU disagreed that the choice of these inventories was not appropriate for the analysis. Upwind states also suggested that MANE–VU states adopt the 2021 timeline for regional haze SIP submissions for the second planning period. MANE–VU agreed with the reasons the comments provided, such as collaboration with data and planning efforts. However, MANE–VU disagreed that the 2018 timeline would prohibit collaboration. Additionally, upwind states noted that they would not be able to address the MANE–VU Asks until they finalize their SIPs. MANE–VU believed the assumption of the implementation of the Asks from upwind states in its 2028 control case modeling was reasonable.

In sum, New York participated in the MANE–VU intra- and inter-RPO consultation and satisfied the MANE–VU Asks, satisfying 40 CFR 51.308(f)(2)(ii)(A) and (B). New York satisfied 40 CFR 51.308(f)(2)(ii)(C) by participating in MANE–VU's consultation process, which documented the disagreements between the upwind states and MANE–VU and explained MANE–VU's reasoning on each of the disputed issues. Thus, the EPA proposes that New York has satisfied the requirements of 40 CFR 51.308(f)(2)(ii).[98]

The documentation requirement of 40 CFR 51.308(f)(2)(iii) provides that states may meet their obligations to document the technical bases on which they are relying to determine the emission reductions measures that are necessary to make reasonable progress through an RPO, as long as the process has been ''approved by all State participants.'' As explained above, New York chose to rely on MANE–VU's technical information, modeling, and analysis to support development of its long-term strategy. The MANE–VU technical analyses on which New York relied are listed in the State's SIP submission and include source contribution assessments, information on each of the four factors and visibility modeling information for certain EGUs, and evaluations of emission reduction strategies for specific source categories. We propose to find that New York's participation in and reliance on the documentation developed by MANE–VU in support of its process and technical analyses to identify visibility-impairing pollutants and sources and to form the basis of its long-term strategy (the Asks) satisfies the requirements of 40 CFR 51.308(f)(2)(iii).

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data. New York's submission includes emissions inventory data from 2014.[99] New York later provided a supplement including 2017 emission inventory data,[100] which was the most recent year of data that New York had submitted to the EPA to meet the triennial reporting requirement within 12 months prior to New York's submittal in March 2020. New York's supplement updated the tables and graphs in the submission with the addition of the 2017 data. The EPA proposes to find that New York has satisfied the emission inventory requirement in 40 CFR 51.308(f)(2)(iii).

The EPA also proposes to find that New York considered the five additional factors in 40 CFR 51.308(f)(2)(iv) in developing its long-term strategy. Pursuant to 40 CFR 51.308(f)(2)(iv)(A), New York noted that ongoing Federal emission control programs that contribute to emission reductions through 2028, including Cross-State Air Pollution Rule (CSAPR), Boiler Maximum Achievable Control Technology (MACT) Rules, Reciprocating Internal Combustion Engine (RICE) MACT Standards, Consent Decrees, and portable fuel container rules, would impact emissions

[97] *See* appendix E ''MANE–VU Regional Haze Consultation Report.''

[98] New York referenced the ''MANE–VU Regional Haze Consultation Plan (5/5/2017)'' and provided documentation of the MANE–VU consultation process in appendix E, ''MANE–VU Regional Haze Consultation Report (7/27/2018)'' of its Regional Haze SIP submission.

[99] *See* section 10.2.3 of the NY RH 2nd Implementation Period SIP submission.

[100] *See* docket document ''NY Regional Haze Inventory Supplement.''

of visibility impairing pollutants from point and nonpoint sources in the second implementation period. For nonroad sources, New York identified Clean Air Nonroad Diesel Final Rule-Tier 4, Control of Emissions from Nonroad Large Spark-Ignition Engines and Recreational Engines (Marine and Land-Based), and Small Engine Spark Ignition (''Bond'') Rule. New York identified Heavy Duty Diesel (207) Engine Standard, Tier 3 Motor Vehicle Standards, and Light Duty Vehicle GHG Rule for Model-Year 2017–2025 as on-road source controls. On-going measures from various source categories that New York considered in developing its long-term strategy were discussed in section 10.3.6 of their submission. Some of the SIP-approved state measures that New York describes are:

- Part 212: General Process Emission Sources
- Part 215: Open Burning
- Part 217: Motor Vehicle Emissions
- Part 219: Incinerators
- Part 220: Portland Cement Plants and Glass Plants
- Part 222: Distributed Generation Sources.
- Part 225: Fuel Composition and Use
- Part 227: Stationary Combustion Installations
- Part 231: New Source Review for New and Modified Facilities
- Part 243: CSAPR NO_X Ozone Season Group 2 Trading Program
- Part 244: CSAPR NO_X Annual Trading Program
- Part 245: CSAPR SO_2 Group 1 Trading Program
- Part 249: Best Available Retrofit Technology

NYSDEC provided a supplement that organizes these SIP-approved state measures by the first and second regional haze implementation periods. NYSDEC clarified that ''regulations adopted during the first implementation period are considered existing measures and are still necessary for 'reasonable further progress' while regulations adapted during the second implementation period are considered part of New York's long-term strategy.'' [101]

New York's consideration of measures to mitigate the impacts of construction activities as required by 40 CFR 51.308(f)(2)(iv)(B) includes discussion of a report that found that, from a regional haze perspective, crustal material from anthropogenic sources does not play a major role in visibility impairment at MANE–VU Class I areas.[102] While construction activities can be responsible for direct PM emissions in the region, the dust settles out of the air relatively close to the sources and does not significantly impact visibility at distant Class I areas. New York cited section 107–11: Air Quality Protection of NYSDOT's Standard Specifications which requires contractors to apply protective measures to prevent dust from being released from construction sites. A summary of the PM emission inventory in New York can be found in section IV.H. of this rulemaking.[103]

Source retirements and replacement schedules are addressed pursuant to 40 CFR 51.308(f)(2)(iv)(C) in section 10.3.8 of New York's submission. Source retirements and replacements were considered in developing the 2028 emission projections, with on the books/on the way retirements and replacement included in the 2028 projections. That said, New York's submittal indicated that shutdowns of large EGUs or industrial sources within the state were scheduled to occur. The units Indian Point 2 and Indian Point 3, located at Entergy Nuclear Power Marketing, had deactivation dates of April 30, 2020 and April 30, 2021, respectively. Greenpoint GT 1 unit, located at Hawkeye Energy Greenport LLC had a deactivation date of June 6, 2018. Finally, the units Selkirk 1 and Selkirk 2, located at Selkirk Cogen Partners, LP had a deactivation date of May 17, 2018.[104] New York confirmed that the deactivations of Indian Point 2 and Indian Point 3 occurred as scheduled on April 30, 2020 and April 30, 2021, respectively,[105] and advised that the deactivation requests for the Greenpoint GT1, Selkirk 1, and Selkirk 2 units were withdrawn and the units continue to operate.[106]

In considering smoke management as required in 40 CFR 51.308(f)(2)(iv)(D), New York stated that prescribed fires have not been shown to significantly contribute to visibility impairment in mandatory Class I areas.[107] New York cited 6 NYCRR Part 194, Forest Practices, its regulation for prescribed burns that considers the possible impacts in mandatory Class I Federal areas. New York reported that there was a total of 12 prescribed fires in 2016 and a total of 11 prescribed fires in 2015 that were conducted by NYSDEC on public land.[108] A strengthened ban on open burning, 6 NYCRR Part 215, has also helped reduce forest fires. Additionally, New York has a program in which owners/managers must get prior authorization and a permit before implementing fire plans that require an approved burn plan be in place.

New York considered the anticipated net effect of projected changes in emissions as required by 40 CFR 51.308(f)(2)(iv)(E) by discussing, in section 10.8 of its submission, the photochemical modeling for the 2018–2028 period it conducted in collaboration with MANE–VU. The two modeling cases that were run were a 2028 base case, which considered only the on-the books controls, and a 2028 control case that considered implementation of the MANE–VU Ask. In response to this modeling, New York stated that the emission reductions will allow the visibility in mandatory class one areas to meet the RPGs through 2028, which is on pace for the 2064 natural visibility benchmark. Figures 9–2 through 9–8 of New York's submission illustrate the predicted visibility improvements by 2028 resulting from the implementation of the Mane-VU regional long-term strategy by New York and others.

Because New York has considered each of the five additional factors and either discussed the measures it has in place to address a factor or explained how a factor informed MANE–VU's technical analysis for second implementation period planning for reasonable progress, the EPA proposes to find that New York has satisfied the requirements of 40 CFR 51.308(f)(2)(iv).

[101] *See* docket document ''NY State Measures Supplement.''

[102] *See* section 10.7.1 of the NY RH 2nd Implementation Period SIP submission.

[103] Section 7.1.2 of the NY RH 2nd Implementation Period SIP submission addresses the PM_{10} inventory for NY.

[104] Refer to Section 10.3.8 of NY's submittal (as included above).

[105] Confirmation for the retirement of Indian Point 2 on April 30, 2020 can be found in the Notes for Table III–2 on page 99 of the New York System Independent System Operators 2021 Load and Capacity Report (Gold Book).

See https://www.nyiso.com/documents/20142/2226333/2021-Gold-Book-Final-Public.pdf/b08606d7-db88-c04b-b260-ab35c300ed64. Confirmation for the retirement of Indian Point 3 on April 30, 2021 can be found in the Notes for Table III–2 on page 99 of the New York System Independent System Operators 2022 Load and Capacity Report (Gold Book). *See https://www.nyiso.com/documents/20142/2226333/2022-Gold-Book-Final-Public.pdf/cd2fb218-fd1e-8428-7f19-df3e0cf4df3e.*

[106] Confirmation for the withdrawal of the deactivation requests and continued operation for the Selkirk and Hawkeye units can be found on page 88 and page 95 (respectively) of the New York System Independent System Operators 2023 Load and Capacity Report (Gold Book). *See https://www.nyiso.com/documents/20142/2226333/2023-Gold-Book-Public.pdf/c079fc6b-514f-b28d-60e2-256546600214.*

[107] *See* section 10.7.2 of the NY RH 2nd Implementation Period SIP submission.

[108] *Id.*

F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Section 51.308(f)(3)(i) requires a state in which a Class I area is located to establish RPGs—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under paragraph (f)(2) to be in states' long-term strategies, as well as implementation of other CAA requirements. The long-term strategies as reflected by the RPGs must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. Section 51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPG for the most impaired days represents a slower rate of visibility improvement than the uniform rate of progress calculated under 40 CFR 51.308(f)(1)(vi). Under 40 CFR 51.308(f)(3)(ii)(A), if the state in which a mandatory Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the state must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the state that would be reasonable to include in its long-term strategy. Section 51.308(f)(3)(ii)(A) does not apply to New York, as it does not have a Class I area, so New York is not required to establish RPGs. Section 51.308(f)(3)(ii)(B), however, requires that if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another* state, and the RPG for the most impaired days in that Class I areas is above the URP, the upwind state must provide the same demonstration. New York's SIP revision included the modeled MANE–VU 2028 visibility projections at nearby Class I areas.[109] While these projections may not represent the final RPGs for these Class I areas, all of the 2028 projections for the most impaired days at these areas (Acadia, Brigantine, Great Gulf, Lye Brook, Moosehorn, Dolly Sods and Shenandoah) are well below the respective 2028 glidepaths. In addition, we note that New York's largest contribution is to Lye Brook Wilderness, in Vermont.

The EPA proposes to determine that New York has satisfied the applicable requirements of 40 CFR 51.308(f)(3) relating to reasonable progress goals.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this subsection is for states with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. New York does not have a Class I area and therefore its SIP is not required to provide for a monitoring strategy and associated requirements. It is also not subject to the requirements of 40 CFR 51.308(f)(6)(i), (ii), and (iv), which apply only to states with Class I areas and pertain to the establishment of monitoring sites and reporting and use of monitoring data. However, pursuant to 40 CFR 51.308(f)(6)(iii), New York's SIP is required to provide for procedures by which monitoring data and other information are used in determining the contribution to emissions to visibility impairment in other states. MANE–VU and New York accept the contribution assessment analysis, published by MANE–VU on its website.[110] The analysis included Eulerian (grid-based) source models, Lagrangian (air parcel-based) source dispersion models, as well as a variety of data analysis techniques that include source apportionment models, back trajectory calculations, and the use of monitoring and inventory data. New York State agrees that MANE–VU is providing appropriate technical information by using the IMPROVE program data.[111] New York provides a description and location for the IMPROVE monitors in the mandatory Class I Federal areas to which New York contributes to regional haze.[112]

Therefore, the EPA is proposing to find that New York's SIP provides for the necessary elements to satisfy the applicable requirements in 40 CFR 51.308(f)(6)(iii) for states without Class I areas.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. New York provides for emissions inventories and estimates for future projected emissions by participating in the MANE–VU RPO and complying with EPA's Air Emissions Reporting Rule (AERR). In 40 CFR part 51, subpart A, the AERR requires states to submit updated emissions inventories for criteria pollutants to EPA's Emissions Inventory System (EIS) every three years. The emission inventory data is used to develop the National Emissions Inventory (NEI), which provides for, among other things, a triennial statewide inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment.

Section 7.1 of New York's second implementation period regional haze SIP submission includes tables of NEI data. The source categories of the emissions inventories included are: (1) Point sources, (2) nonpoint sources, (3) non-road mobile sources, and (4) on-road mobile sources. The point source category is further divided into Air Markets Program Data (AMPD) point sources and non-AMPD point sources.[113] New York included NEI emissions inventories for 2002 (one of the regional haze program baseline years), 2008, and 2014 for the following pollutants SO_2, NO_X, PM_{10}, $PM_{2.5}$, VOCs, CO and NH_3; data from New York's 2011 base year emission inventory was also included for the above referenced pollutants. New York also provided a summary of SO_2 and NO_X emissions for AMPD sources for the years of 2016 and 2017.[114] New York's SIP revision was submitted in March 2020; therefore, the year of the most recent NEI at the time of submission to the EPA was 2017. Since only 2014 NEI data was included, NYSDEC provided a supplement that updated the emission inventory table and graphs with the 2017 NEI data.[115]

Section 51.308(f)(6)(v) also requires states to include estimates of future projected emissions and include a commitment to update the inventory

[109] Section 9.11 of the NY RH 2nd Implementation Period SIP submission.

[110] *See* appendix C of the NY RH 2nd Implementation Period SIP submission, ''Selection of States for MANE–VU Regional Consultation (2018).''

[111] Section 6.2 of the NY RH 2nd Implementation Period SIP submission.

[112] Section 6.3 of the NY RH 2nd Implementation Period SIP submission.

[113] AMPD sources are facilities that participate in EPA's emission trading programs. The majority of AMPD sources are electric generating units (EGUs).

[114] Table 7–2 and 7–14 of the NY RH 2nd Implementation Period SIP submission.

[115] *See* docket document ''NY Regional Haze Inventory Supplement.''

periodically. New York relied on the MANE–VU projected emissions to 2028, which is the end of the second implementation period.[116] MANE–VU completed two 2028 projected emissions modeling cases—a 2028 base case that considers only on-the-books controls and a 2028 control case that considers implementation of the MANE–VU Asks.[117]

The EPA proposes to find that New York has met the requirements of 51.308(f)(6)(v) by its continued participation in MANE–VU and on-going compliance with the AERR, and that no further elements are necessary at this time for New York to assess and report on visibility pursuant to 40 CFR 51.308(f)(6)(vi).

H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of states' regional haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPG for each Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. Section 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, 40 CFR 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

New York's submission describes the status of the measures of the long-term strategy from the first implementation period. As a member of MANE–VU, New York considered the MANE–VU Asks and adopted corresponding measures into its long-term strategy for the first implementation period. The MANE–VU Asks were: (1) Timely implementation of Best Available Retrofit Technology (BART) requirements; (2) EGU controls including Controls at 167 Key Sources that most affect MANE–VU Class I areas; (3) Low sulfur fuel oil strategy; and (4) Continued evaluation of other control measures.

New York did have sources identified on the list of 167 EGUs within its borders and provided a list of the sources subject to BART controls and provided a summary of the control requirements for the subject emission units at each facility.[118] Emission limits or alternate compliance methods (*i.e.,* shutdowns and capping provisions) for these facilities were approved as SIP revisions by EPA (77 FR 51915, August 28, 2012), except for the Roseton and Danskammer Generating Stations. EPA issued FIP limits for the BART-eligible sources at these facilities, which were later adopted into the respective Title V permits and resubmitted as SIP revisions. Danskammer's BART measures were approved as SIP revisions, effective January 3, 2018 (82 FR 57126, December 4, 2017), and Roseton's BART measures received approval effective March 18, 2018 (83 FR 6970, February 16, 2018).

Lastly, in response to a MANE–VU Ask, in 2015 New York promulgated a rule to reduce the sulfur content in commercial heating oil and to prohibit the use of heavy heating oils that contain high levels of sulfur. The EPA approved this rule into the SIP. (83 FR 42589, August 28, 2018). In section 7.1.4 of New York's submission, New York explains that the SO_2 decreases are attributed to the low sulfur fuel strategy and to the 90% or greater reductions in SO_2 emissions from the 167 EGU stacks (both inside and outside of MANE–VU), as requested in the MANE–VU ''Ask'' for the states within MANE–VU for the first regional haze planning period. Since some components of the MANE–VU low sulfur fuel strategy have milestones of 2016 and 2018, and as MANE–VU states continue to adopt rules to implement the strategy, additional SO_2 emissions reductions have likely been obtained since 2017 and are expected to continue into the future.

The EPA proposes to find that New York has met the requirements of 51.308(g)(1) and (2) because its SIP submission describes the measures included in the long-term strategy from the first implementation period, as well as the status of their implementation and the emission reductions achieved through such implementation.

Section 51.308(g)(3) requires states with Class I areas to report on the visibility conditions and changes at those areas. New York does not have any Class I areas and is not required to address this provision.

Pursuant to 40 CFR 51.308(g)(4), New York provided a summary of emissions of SO_2, NO_X, PM_{10}, $PM_{2.5}$, VOCs, and NH_3 from all sources and activities, including from point, nonpoint, non-road mobile, and on-road mobile sources, for the time period from 2002 to 2017. New York explained that 2014 was the most recent year for which it had submitted emission estimates to fulfill the requirements of part 51 subpart A (the AERR), however since their submission was not until 2020, New York later provided a supplement that included the 2017 data.[119]

The emissions information submitted by New York indicates that SO_2 emissions decreased over the 2002 through 2017 period. SO_2 emissions from AMPD sources in New York have declined from 2002 to 2017. Also, SO_2 emissions from non-AMPD point sources and nonpoint, non-road, and on-road sources all declined from 2002 to 2017, although not all categories have shown a consistent decrease.[120] SO_2 decreases can be attributed to the low sulfur fuel strategy and the 90% or greater reduction in SO_2 emissions at the EGU stacks identified in the MANE–VU ''Ask'' for states within MANE–VU for the first regional haze planning

[116] *See* section 7.2 of the NY RH 2nd Implementation Period SIP submission.

[117] *See* appendix D ''Technical Support Document for the 2011 Northeastern U.S. Gamma Emission Inventory (January 2018)'' and ''Ozone Transport Commission/Mid-Atlantic Northeastern Visibility Union 2011 Based Modeling Platform Support Document—October 2018 Update (October 2018)'' in the SIP submission.

[118] Table 8–1 of the NY RH 2nd Implementation Period SIP submission.

[119] *See* docket document ''NY Regional Haze Inventory Supplement.''

[120] *See* section 7.1.4 of the NY RH 2nd Implementation Period SIP submission and ''NY Regional Haze Inventory Supplement.''

period. Other SO_2 emission decreases are due to source shutdowns and fuel switching.[121]

Total NO_X emissions have also declined from 2002 to 2017, although not all categories have shown a consistent decrease. NO_X emissions from AMPD, non-road, and on-road sources in New York have declined from 2002 to 2017. New York explains that nonpoint emissions of NO_X have been variable from 2002 to 2014 due to year variation, as well as changes to the tools used to estimate nonpoint emissions. New York asserts that reductions in NO_X emissions from AMPD sources are due to EGU retirements and Federal regional allowance trading programs, while reductions in non-road and on-road NO_X are due to a range of Federal requirements for different types of engines and fuels.[122]

Emissions of PM_{10} decreased overall from 2002 to 2017. New York explains that changes in PM_{10} emissions from 2002 to 2008 and 2011 to 2014 are likely due to changes to the methods used for estimating residential wood combustion emissions.[123]

Similarly, NH_3 emissions in New York were lower overall in 2017 relative to 2002, although emissions from nonpoint sources do show an increase from 2014 to 2017.[124] New York notes that it believes there was no significant change in nonpoint ammonia emissions from 2014–2017; the State attributes the disparity to changes in EPA modeling and methodology.[125]

Total $PM_{2.5}$ emissions in New York have remained constant from 2002–2014, with 2008 being an outlier. Similar to PM_{10}, New York explains that some of increases or declines in $PM_{2.5}$ could be due to changes in estimation methodologies for categories such as yard waste burning, paved and unpaved road dust, and residential wood combustion.[126] There was a reduction in total $PM_{2.5}$ emission from 2014 to 2017.[127]

In New York, the total VOC emissions have generally declined over the 2002 to 2014 period; emissions from nonpoint sources have increased during this time causing an increase in the total VOC emissions in 2017. NYSDEC believes there was no significant change in emissions from 2014–2017, but rather attributes the disparity to changes in EPA modeling and methodology.[128] New York states that decreases in VOC emissions can be attributed to Federal and state rules for evaporated sources of VOC emissions.[129]

The EPA is proposing to find that New York has satisfied the requirements of 40 CFR 51.308(g)(4) by providing emissions information for SO_2, NO_X, PM_{10}, $PM_{2.5}$, VOCs, CO and NH_3 broken down by type of source.

New York uses the emissions trend data in the SIP submission [130] and the supplemental information [131] to support the assessment that anthropogenic haze-causing pollutant emissions in New York have decreased during the reporting period and that changes in emissions have not limited or impeded progress in reducing pollutant emissions and improving visibility. In conclusion, the EPA is proposing to find that New York has met the requirements of 40 CFR 51.308(g)(5).

I. Requirements for State and Federal Land Manager Coordination

Section 51.308(i)(2)'s FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the state level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with states: assessment of visibility impairment in any class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

The states in the MANE–VU RPO conducted FLM consultation early in the planning process concurrent with the state-to-state consultation that formed the basis of the RPO's decision making process. As part of the consultation, the FLMs were given the opportunity to review and comment on the technical documents developed by MANE–VU. The FLMs were invited to attend the intra- and inter-RPO consultations calls among states and at least one FLM representative was documented to have attended seven intra-RPO meetings and all inter-RPO meetings. New York participated in these consultation meetings and calls.[132]

As part of this early engagement with the FLMs, in April 2018 the NPS sent letters to the MANE–VU states requesting that they consider specific individual sources in their long-term strategies. NPS used an analysis of emissions divided by distance (Q/d) to estimate the impact of MANE–VU facilities. To select the facilities, NPS first summed 2014 NEI NO_X, PM_{10}, SO_2, and SO_4 and divided by the distance to a specified NPS mandatory Class I Federal area across all MANE–VU states relative to Acadia, Mammoth Cave and Shenandoah National Parks, then ranked the Q/d values relative to each Class I area, created a running total, and lastly identified those facilities contributing to 80% of the total impact at each NPS Class I area. NPS applied a similar process to facilities in Maine relative to Acadia National Park. NPS merged the resulting lists of facilities and sorted them by their states. NPS suggested that a state consider those facilities comprising 80% of the Q/d total, not to exceed the 25 top ranked facilities. The NPS identified 39 facilities in New York in this letter.[133] In a letter dated October 22, 2018, NPS identified 26 facilities for which more control information was desired. To address the NPS's request for more information, section 10.4 of New York's submission details the emission controls and updates to the 26 facilities that have occurred since the 2014 NEI. Table 10–4 in New York's submission contains the 26 facilities that were identified by the NPS. The U.S. Forest Service requested that New York consider specific individual sources in its long-term strategy (LTS) and identified three

[121] *See* page 7–25 of the NY RH 2nd Implementation Period SIP submission.

[122] *See* section 7.1.1 of the NY RH 2nd Implementation Period SIP submission.

[123] *See* section 7.1.2 of the NY RH 2nd Implementation Period SIP submission.

[124] *See* docket document ''NY Regional Haze Inventory Supplement.''

[125] Id.

[126] *See* section 7.1.3 of the NY RH 2nd Implementation Period SIP submission.

[127] *See* docket document ''NY Regional Haze Inventory Supplement.''

[128] Id.

[129] *See* section 7.1.5 of the NY RH 2nd Implementation Period SIP submission.

[130] *See* section 7 ''Emission Inventory'' of the NY RH 2nd Implementation Period SIP submission.

[131] *See* docket document ''''NY Regional Haze Inventory Supplement.''

[132] *See* appendix E of the NY RH 2nd Implementation Period SIP submission, ''MANE–VU Regional Haze Consultation Summary (MANE–VU, July 2018).''

[133] *See* appendix E of the NY RH 2nd Implementation Period SIP submission, ''MANE–VU Regional Haze Consultation Summary (MANE–VU, July 2018).''

facilities that New York should consider. To address the Forest Service's request, more information was provided in section 10.5 of New York's submission on the emission controls and updates the facilities have undergone since 2011. New York provided a supplement that contains emission data for the facilities identified by the FLMs.[134] This supplement provides emission data from 2018–2020 for the facilities mentioned in section 10.4 and 10.5 of New York's submission. In addition, New York provided a summary table of the controls at each of the facilities identified by the FLMs for SO_2, PM, and NO_X.[135]

On February 22, 2019, New York submitted a draft Regional Haze SIP to the U.S. Forest Service, the U.S. Fish and Wildlife Service, and the National Park Service for a 60-day review and comment period pursuant to 40 CFR 51.308(i)(2).[136] New York received comments from the Forest Service on April 22, 2019, and from the National Park Service on May 11, 2019. The U.S. Fish and Wildlife Service indicated that they did not have any comments on April 17, 2019. New York responded to the FLM comments and included the responses in appendix A of its submission, in accordance with 40 CFR 51.308(i)(3). On August 7, 2019, New York published a Public Notice in the NYSDEC Environmental Notice Bulletin (ENB) announcing that it planned to submit to EPA a Regional Haze SIP revision and providing a 30-day period for the public to comment or to request a hearing. On September 4, 2019, New York published a notice in the ENB extending the period for the public to comment or request a hearing to October 7, 2019. New York received and responded to public comments and included both in their submission.

For the reasons stated above, the EPA proposes to find that New York has met its requirements under 40 CFR 51.308(i) to consult with the FLMs on its regional haze SIP for the second implementation period. New York committed in its SIP to ongoing consultation with the FLMs on regional haze issues throughout the implementation period, consistent with the requirement of 40 CFR 51.308(i)(4).[137]

[134] *See* docket document ''FLM List Recent Emissions.''

[135] *See* docket document ''FLM List Facility Controls.''

[136] *See* appendix A of the NY RH 2nd Implementation Period SIP submission, ''Summary and Response to Federal Land Manager Comments.''

[137] *See* section 4 of the NY RH 2nd Implementation Period SIP submission.

V. Environmental Justice Considerations

New York provided information related to its environmental justice (EJ) considerations as part of its SIP submission. This information consisted of details on New York's Climate Leadership and Community Protection Act (CLCPA), which expedites the transition to a clean energy economy by requiring New York to achieve a carbon free electricity system by 2040 and reduce greenhouse gas emissions 85% below 1990 levels by 2050. New York explains that the CLCPA targets investments to benefit disadvantaged communities, creates tens of thousands of new jobs, and improves public health and quality of life via more robust clean energy choices. The CLCPA also focuses on environmental justice by requiring state agencies to invest at least 35% of clean energy program resources to benefit disadvantaged communities. Through the adoption of these regulations, New York intends to reduce greenhouse gas emissions 85% by 2050, with an interim benchmark of 40% reduction in emissions by 2030 (both relative to 1990 levels). Additionally, through the CLCPA, New York intends to form a transition working group to ensure that individuals working in conventional energy industries are provided with training and opportunities in the growing clean energy economy.

New York received several comments regarding its consideration of EJ within its Regional Haze plan for the second implementation period. In particular, New York was asked by several commentors to analyze the EJ impacts to ensure the RH plan would reduce greenhouse gas emissions where possible, to align with the CLCPA and minimize harms to disproportionately impacted communities. One commentor stated EJ impacts are the type of non-air quality impacts the New York should consider when it sets RPGs for Class 1 areas and determines reasonable progress measures for specific sources. Another commentor critiqued New York for its lack of evaluation as to whether its reasonable progress measures will affect disproportionately impacted communities and suggested that incorporating EJ impacts into the RPG analysis would maximize the environmental benefits of the regional haze program.

New York responded to these comments affirming that while the Regional Haze Rule does not require states to address EJ or greenhouse gas emissions reductions or impacts, and that New York is analyzing the impact of state measures through other regulatory efforts and initiatives it has adopted which will result in emission reductions in EJ areas. New York also asserted that EJ would be further addressed through programs such as the CLCPA, which has a large EJ component, and welcomed the commentor to comment on such processes as they proceed.

That said, the EPA believes that this action is not likely to result in any new disproportionate and adverse effects on communities with EJ concerns. It is expected that the air quality improvements associated with New York's regional haze plan will provide air quality benefits across the state, and will not result in any new potentially disproportionate and adverse effects within communities with EJ concerns. However, since EJ concerns are more accurately captured when evaluating relatively smaller areas or on a community level basis, the EPA believes that it is not practicable to assess, via a comprehensive EJ analysis, whether this proposed action would result in any new disproportionate and adverse effects on communities with EJ concerns. Furthermore, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. In addition, there is no information in the record indicating that this action is inconsistent with the stated goal of E.O. 12898 and/or that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

In conclusion, the EPA expects that this proposed action will generally be neutral or contribute to reduced environmental and health impacts on all populations in New York, including people of color and low-income populations. At a minimum, this action is not expected to worsen any air quality and it is expected this action will ensure the State is meeting requirements to attain and/or maintain air quality standards. The EPA therefore concludes that this proposed rule will not have or lead to disproportionately high or adverse human health or environmental effects on communities with EJ concerns. New York provided details on its CLCPA as part of its SIP submittal to demonstrate the State's consideration of EJ even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA's evaluation of New York's EJ considerations is described above. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, and not as a basis of the action.

The EPA is taking action under the CAA on bases independent of the State's evaluation of EJ.

VI. The EPA's Proposed Action

The EPA is proposing to approve New York's May 12, 2020, supplemented on February 16, 2022, SIP submission as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f).

VII. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not proposing to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and it will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The NYSDEC did not evaluate EJ considerations by means of an extensive and comprehensive EJ analysis as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Nevertheless, NYSDEC did reference existing EJ programs within its SIP submittal, as described above in section V, ''Environmental Justice Considerations.'' The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2024–06105 Filed 3–21–24; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2024–0059; FRL–11682–02–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (February 2024)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 22, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0059, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Dan Rosenblatt, Registration Division (RD) (7505T), main telephone number: (202) 566–2875, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

applies to them. Potentially affected entities may include:

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance Exemptions for Inerts (Except PIPS)

1. *PP IN–11735.* EPA–HQ–OPP–2023–0608. From Pyxis Regulatory Consulting Inc. (4110 136th St. Ct. NW, Gig Harbor, WA 98332), on behalf of Tessara PTY Ltd., (35 Kimball Avenue Epping 2 Cape Town 7460 S Africa), requests to establish an exemption from the requirement of a tolerance for residues of Poly(oxy-1,2-ethanediyl), polymer with 1,2-ethandiol, 2-methyl-1,3-propanediol, hexanedioic acid, 1,4-benzenedicarboxylic acid, 1,3-benzenedicarboxylic acid, 1,1′-methylenebis[4-isocyanatobenzene] and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, with a minimum number average molecular weight (in amu) of 1400 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

2. *PP IN–11842.* EPA–HQ–OPP–2024–0104. Spring Regulatory Sciences, (6620 Cypresswood Dr., Suite 250, Spring, TX 77379), on behalf of Heubach Colorants USA, LLC, (5500 77 Center Drive, Suite 120/140, Charlotte, NC 28217–0160) requests to establish an exemption from the requirement of a tolerance for residues of Ethanol, 2,2′,2″-nitrilotris, compd. with α-hydro- hydroxypoly (oxy-1,2-ethanediyl) ether with N-[4-[[4-[bis(2-hydroxyethyl)amino]phenyl](2,4-disulfophenyl)methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium inner salt (1:4:1) (CAS Reg. No. 1147101–80–1); minimum number average molecular weight (in amu) of 1460 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

3. *PP IN–11843.* EPA–HQ–OPP–2024–0103. Spring Regulatory Sciences, (6620 Cypresswood Dr., Suite 250, Spring, TX 77379), on behalf of Heubach Colorants USA, LLC, (5500 77 Center Drive, Suite 120/140, Charlotte, NC 28217–0160), requests to establish an exemption from the requirement of a tolerance for residues of Poly(oxy-1,2-ethanediyl),a-hydro-ω-hydroxy-,ether with N-[4-[bis[4-[bis(2 hydroxyethyl)aminophenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2hydroxyethyl) ethanaminium, benzenesulfonate (6:1:1) (CAS Reg. No. 1313600–46–2); minimum number average molecular weight (in amu) of 1370 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

4. *PP IN–11844.* EPA–HQ–OPP–2024–0109. Momentive Performance Materials, Inc., 2750 Balltown Road, Niskayuna, NY 12309, requests to establish an exemption from the requirement of a tolerance for residues of methyl end-capped polydimethylsiloxane (CAS Reg. No. 63148–62–9) with a minimum number average molecular weight (inamu) of 1,298 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: March 14, 2024.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2024–06145 Filed 3–21–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240318–0082]

RIN 0648–BM71

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 66

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes to approve and implement Framework Adjustment 66 to the Northeast Multispecies Fishery Management Plan. This rule proposes to set catch limits for 8 of the 20 multispecies stocks, modify the accountability measure trigger for Atlantic halibut, and make a temporary modification to the accountability trigger for the scallop fishery for Georges Bank yellowtail flounder. This action is necessary to respond to updated scientific information and to achieve the goals and objectives of the fishery management plan. The proposed measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

DATES: Comments must be received by 5 p.m. EST on April 8, 2024.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2023–0153, by the following method:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and type NOAA–NMFS–2023–0153 in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. You may submit anonymous comments by entering ''N/A'' in the required fields if you wish to remain anonymous.

Copies of Framework Adjustment 66, including the draft Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Act Analysis prepared by the New England Fishery Management Council in support of this action, are available from Dr. Cate O'Keefe, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: *http://www.nefmc.org/management-plans/northeast-multispecies* or *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Policy Analyst, phone: 978–282–8493; email: *Liz.Sullivan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Proposed Measures

This action would implement the management measures in Framework Adjustment 66 to the Northeast Multispecies Fishery Management Plan (FMP). The New England Fishery Management Council reviewed the proposed regulations and deemed them consistent with, and necessary to implement, Framework 66 in a January 16, 2024, letter from Council Chairman Eric Reid to Regional Administrator Michael Pentony. Under the Magnuson-Stevens Fishery Conservation and Management Act, on behalf of the Secretary of Commerce, the Greater Atlantic Regional Fisheries Office's Regional Administrator approves, disapproves, or partially approves measures that the Council proposes, based on consistency with the Act and other applicable law. NMFS reviews proposed regulations for consistency with the fishery management plan, plan amendments, the Magnuson-Stevens Act and other applicable law. The Regional Administrator is seeking comments on these proposed regulations and intends to promulgate the final regulations after careful consideration of any submitted comments. Through Framework 66, the Council proposes to:

• Set shared U.S./Canada quotas for Georges Bank (GB) yellowtail flounder and eastern GB cod and haddock for fishing years 2024 and 2025;

• Set specifications, including catch limits for eight groundfish stocks: redfish, northern windowpane flounder, and southern windowpane flounder for fishing years 2024–2026, and GB cod, GB haddock, Gulf of Maine (GOM) haddock, GB yellowtail flounder, and white hake for fishing years 2024–2025;

• Make a minor adjustment to the subcomponent quotas for GOM cod and adjust the amount set aside for Canadian catch for Atlantic halibut;

• Remove the management uncertainty buffer for sectors for GOM haddock and white hake, if the at-sea monitoring (ASM) target coverage level is set at 90 percent or greater for the 2024 and 2025 fishing years;

• Modify the catch threshold for implementing the Atlantic halibut accountability measures (AM); and

• Temporarily modify the catch threshold for implementing the scallop fishery's AM for GB yellowtail flounder.

This action also proposes minor, clarifying regulatory changes that are not part of Framework 66, but that may be considered and implemented under section 305(d) authority in the Magnuson-Stevens Act to make changes necessary to carry out the FMP. NMFS is proposing these changes in conjunction with the Framework 66 proposed measures for expediency purposes. These proposed changes are described below under the heading, Minor, Clarifying Regulatory Changes under Secretarial Authority.

Fishing Years 2024 and 2025 Shared U.S./Canada Quotas

Management of Transboundary Georges Bank Stocks

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are jointly managed with Canada under the United States/Canada Resource Sharing Understanding. The Transboundary Resource Assessment Committee (TRAC) is the scientific arm of the Understanding and is tasked with assessing the shared stocks and providing information necessary to support management of shared resources by the Transboundary Management Guidance Committee (TMGC). The TMGC is a government-industry committee made up of representatives from the United States and Canada that acts to provide management guidance for U.S. and Canadian domestic management authorities. For historical information about the TMGC see: *http://www.bio.gc.ca/info/intercol/tmgc-cogst/index-en.php.* Each year, the TMGC recommends a shared quota for each stock based on the most recent stock

information and the TMGC's harvest strategy. The TMGC's harvest strategy for setting catch levels is to maintain a low to neutral risk (less than 50 percent) of exceeding the fishing mortality limit for each stock. The harvest strategy also specifies that, when stock conditions are poor, fishing mortality should be further reduced to promote stock rebuilding. The shared quotas are allocated between the United States and Canada based on a formula that considers historical catch (10-percent weighting) and the current resource distribution (90-percent weighting).

For GB yellowtail flounder, the Council's Scientific and Statistical Committee (SSC) also recommends an acceptable biological catch (ABC) for the stock. The ABC is typically used to inform the U.S. TMGC's discussions with Canada for the annual shared quota. Although the stock is jointly managed with Canada, and the TMGC recommends annual shared quotas, the Council may not set catch limits that would exceed the SSC's recommendation. The SSC does not recommend ABCs for eastern GB cod and haddock because they are management units of the total GB cod and haddock stocks. The SSC recommends overall ABCs for the total GB cod and haddock stocks. The shared U.S./Canada quota for eastern GB cod and haddock is included in these overall ABCs, and must be consistent with the SSC's recommendation for the total GB stocks.

2024 and 2025 U.S./Canada Quotas

The TRAC assessed the three transboundary stocks in July 2023, and detailed summaries of these assessments can be found at: *https://www.nefsc.noaa.gov/assessments/trac/*. The TMGC met in September 2023 to recommend shared quotas for 2024 based on the updated assessments, the Council adopted the TMGC's recommendations in Framework 66. Framework 66 proposes to set the same shared quotas for a second year (*i.e.,* for fishing year 2025) as placeholders, with the expectation that those quotas will be reviewed annually and new recommendations will be received from the TMGC. The proposed 2024 and 2025 shared U.S./Canada quotas, and each country's allocation, are listed in table 1.

TABLE 1—PROPOSED 2024 AND 2025 FISHING YEARS U.S./CANADA QUOTAS (MT, LIVE WEIGHT) AND PERCENT OF QUOTA ALLOCATED TO EACH COUNTRY

Quota	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder
Total Shared Quota	520	10,000	168.
U.S. Quota	151 (29 percent)	3,100 (31 percent)	71 (42 percent).
Canadian Quota	369 (71 percent)	6,900 (69 percent)	97 (58 percent).

The proposed 2024 U.S. quotas for the eastern GB cod and GB haddock would represent 12-percent and 104-percent increases, respectively, compared to 2023; the proposed GB yellowtail flounder would represent a 33-percent decrease. For a more detailed discussion of the TMGC's 2024 catch advice, including a description of each country's quota share, see the TMGC's guidance document that is posted at: *https://www.greateratlantic.fisheries.noaa.gov/*.

The regulations implementing the U.S./Canada Resource Sharing Understanding at 50 CFR 648.85(a) require deducting any overages of the U.S. quota for eastern GB cod, eastern GB haddock, or GB yellowtail flounder from the U.S. quota in the following fishing year. If catch information for the 2023 fishing year indicates that the U.S. fishery exceeded its quota for any of the shared stocks, we will reduce the respective U.S. quotas for the 2024 fishing year in a future management action, as close to May 1, 2024, as possible. If any fishery that is allocated a portion of the U.S. quota exceeds its allocation and causes an overage of the overall U.S. quota, the overage reduction would be applied only to that fishery's allocation in the following fishing year. This ensures that catch by one component of the overall fishery does not negatively affect another component of the overall fishery.

Catch Limits for Fishing Years 2024–2026

Summary of the Proposed Catch Limits

Tables 2 through 12 show the proposed catch limits for the 2024–2026 fishing years. A brief summary of how these catch limits were developed is provided below. More details on the proposed catch limits for each groundfish stock can be found in appendix II (Calculation of Northeast Multispecies Annual Catch Limits, FY 2024—FY 2026) to the Framework 66 Environmental Assessment (see **ADDRESSES** for information on how to get this document).

Through Framework 66, the Council proposes to adopt catch limits for redfish, northern windowpane flounder, and southern windowpane flounder for the 2024–2026 fishing years, based on stock assessments completed in 2023, and catch limits for GB cod, GB haddock, GOM haddock, GB yellowtail flounder, and white hake for fishing years 2024–2025. Framework 65 (86 FR 40353; July 28, 2021) previously set 2024 quotas for redfish, northern windowpane flounder, and southern windowpane flounder based on assessments conducted in 2020, and those would remain in place. Framework 63 (87 FR 42375; July 15, 2022) previously set the 2023–2024 quota for GOM cod, based on an assessment conducted in 2021, and that would also remain in place. Table 2 provides an overview of which catch limits, if any, would change, as proposed in Framework 66, as well as when the stock was most recently assessed. Table 3 provides the percent change in the 2024 catch limit compared to the 2023 fishing year.

TABLE 2—CHANGES TO CATCH LIMITS, AS PROPOSED IN FRAMEWORK 66

Stock	Most recent assessment	Proposed change in Framework 66
GB Cod	2021	New 2024 U.S. ABC.
GOM Cod	2021	Adjust sub-components, 2024 catch limit set by Framework 63.
GB Haddock	2022	New 2024–2025 U.S. ABC.

TABLE 2—CHANGES TO CATCH LIMITS, AS PROPOSED IN FRAMEWORK 66—Continued

Stock	Most recent assessment	Proposed change in Framework 66
GOM Haddock	2022	New 2024–2025 ABC.
GB Yellowtail Flounder	2022	New 2024–2025 ABC.
SNE/MA Yellowtail Flounder	2022	No change: 2024–2025 catch limits set by Framework 65.
CC/GOM Yellowtail Flounder	2022	No change: 2024–2025 catch limits set by Framework 65.
American Plaice	2022	No change: 2024–2025 catch limits set by Framework 65.
Witch Flounder	2022	No change: 2024–2025 catch limits set by Framework 65.
GB Winter Flounder	2022	No change: 2024–2025 catch limits set by Framework 65.
GOM Winter Flounder	2022	No change: 2024–2025 catch limits set by Framework 65.
SNE/MA Winter Flounder	2022	No change: 2024–2025 catch limits set by Framework 65.
Redfish	2023	New 2024–2026 ABC.
White Hake	2022	New 2024–2025 ABC.
Pollock	2022	No change: 2024–2025 catch limits set by Framework 65.
N. Windowpane Flounder	2023	New 2024–2026 ABC.
S. Windowpane Flounder	2023	New 2024–2026 ABC.
Ocean Pout	2022	No change: 2024–2025 catch limits set by Framework 65.
Atlantic Halibut	2022	Adjust Canadian catch estimate, 2024 catch limits set by Framework 65.
Atlantic Wolffish	2022	No change: 2024–2025 catch limits set by Framework 65.

N = northern; S = southern; SNE = Southern New England; MA = Mid-Atlantic.

TABLE 3—PROPOSED FISHING YEARS 2024–2026 OVERFISHING LIMITS AND ACCEPTABLE BIOLOGICAL CATCHES

[mt, live weight]

Stock	2024		Percent change from 2023	2025		2026	
	OFL	U.S. ABC		OFL	U.S. ABC	OFL	U.S. ABC
GB Cod	UNK	535	3	UNK	.....	.....	.....
GOM Cod	980	551	0	.....	.....	.....	.....
GB Haddock	17,768	7,058	−41	15,096	5,382	.....	.....
GOM Haddock	2,651	2,406	−4	2,549	2,312	.....	.....
GB Yellowtail Flounder	UNK	71	−33	UNK	71	.....	.....
SNE/MA Yellowtail Flounder	89	40	0	345	40	.....	.....
CC/GOM Yellowtail Flounder	1,279	992	−11	1,184	915	.....	.....
American Plaice	7,091	5,520	−3	6,763	5,270	.....	.....
Witch Flounder	UNK	1,256	0	UNK	1,256	.....	.....
GB Winter Flounder	2,153	1,549	−9	2,100	1,490	.....	.....
GOM Winter Flounder	1,072	804	0	1,072	804	.....	.....
SNE/MA Winter Flounder	1,425	627	0	1,536	627	.....	.....
Redfish	11,041	8,307	−17	10,982	8,273	11,177	8,418
White Hake	2,607	1,934	5	2,591	1,921	.....	.....
Pollock	18,208	13,940	−7	17,384	13,294	.....	.....
N. Windowpane Flounder	UNK	136	−15	UNK	136	UNK	136
S. Windowpane Flounder	284	213	−45	284	213	284	213
Ocean Pout	125	87	0	125	87	.....	.....
Atlantic Halibut	UNK	78	−9	UNK	78	.....	.....
Atlantic Wolffish	124	93	0	124	93	.....	.....

UNK = Unknown.
Note: An empty cell indicates no overfishing limit (OFL)/ABC is adopted for that year. These catch limits would be set in a future action.

Overfishing Limits and Acceptable Biological Catches

The overfishing limit (OFL) is calculated to set the maximum amount of fish that can be caught in a year, without constituting overfishing. The ABC is typically set lower than the OFL to account for scientific uncertainty. For GB cod, GB haddock, and GB yellowtail flounder, the total ABC is reduced by the amount of the Canadian quota (see table 1 for the Canadian and U.S. shares of these stocks). Although the TMGC recommendations were only for fishing year 2024, the portion of the shared quota that would be allocated to Canada in fishing year 2024 was used to project the U.S. portions of the ABCs for these three stocks for 2025. This avoids artificially inflating the U.S. ABC up to the total ABC for the 2025 fishing year. The TMGC will make new recommendations for 2025, which would replace any quotas for these stocks set in this action. Additionally, although GB winter flounder, white hake, and Atlantic halibut are not jointly managed with Canada, there is some Canadian catch of these stocks. Because the total ABC must account for all sources of fishing mortality, expected Canadian catch of GB winter flounder (38 metric tons; mt), white hake (57 mt), and Atlantic halibut (82 mt) is deducted from the total ABC. The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch (see table 3). For stocks without Canadian catch, the U.S. ABC is equal to the total ABC.

The OFLs are currently unknown for GB cod, GB yellowtail flounder, witch flounder, northern windowpane flounder, and Atlantic halibut. For 2024, the SSC recommended maintaining the unknown OFL for GB yellowtail flounder and northern windowpane flounder. Empirical stock assessments are used for these five stocks, and these assessments can no longer provide quantitative estimates of the status

determination criteria, nor are they appropriate proxies for stock status determination able to be developed. For each of these stocks, the Council has relied on the SSC to provide advice on the likelihood of preventing overfishing and promoting rebuilding under the proposed ABCs. Based on the SSC's recommendation, we have preliminarily determined that these ABCs are based on the best scientific information available and therefore provide a sufficient limit for preventing overfishing and are consistent with the National Standards. This action does not propose any changes to the status determination criteria for these stocks.

GOM Haddock

In Framework 65, the Council recommended specifications for GOM haddock for fishing years 2023–2025 based on 75 percent of the fishing mortality associated with maximum sustainable yield (F_{MSY}). Subsequently, the Council requested that NMFS take emergency action to increase the fishing year 2023 ABC due to concerns about the significant decrease from 2022 and the potential economic impacts if the catch limit were reached earlier in the fishing year. As part of the final rule for Framework 65 (88 FR 56527; August 18, 2023), NMFS took emergency action, increasing the ABC to the level at 100 percent of F_{MSY}. The ABC for GOM haddock under the emergency rule was in effect for 180 days and was scheduled to expire on February 14, 2024. On January 9, 2024, we extended the emergency action for the remainder of the 2023 fishing year through April 30, 2024 (89 FR 1036).

In Framework 66, the Council has recommended increasing the GOM haddock ABC to the level at 90 percent of F_{MSY} for fishing years 2024 and 2025, based on the recommendation from the SSC. This would be a temporary modification to the standard F_{MSY} scientific uncertainty buffer, until the time of the next management track assessment and update of catch advice. This advice takes into consideration the current status of the GOM haddock stock, which was last assessed in 2022 at 270 percent of the target biomass (B_{MSY}), and seeks to strike a balance between the biological and economic considerations.

White Hake

White hake is in a rebuilding plan, implemented in Framework 61 (2021), which specifies setting the ABCs at 70 percent of F_{MSY}. When the stock was assessed in 2022, it was determined to no longer be overfished, but has not yet rebuilt. In Framework 65 (2023), the Council opted to set the ABC for a single year (2023) and therefore Framework 66 must set the ABCs for fishing years 2024 and 2025. The SSC recommended modifying the rebuilding plan to allow the ABC to be set at 75 percent of F_{MSY} for two years only (2024 and 2025). In 2026, the rebuilding plan would revert to 70 percent of F_{MSY}. The SSC recommended no other changes to the rebuilding plan, including the rebuilding timeline ending in 2031, because the stock is still projected to rebuild within that time.

Annual Catch Limits

Development of Annual Catch Limits

The U.S. ABC for each stock is divided among the various fishery components to account for all sources of fishing mortality. An estimate of catch expected from state waters and the other sub-component (*e.g.,* non-groundfish fisheries or some recreational groundfish fisheries) is deducted from the U.S. ABC. The remaining portion of the U.S. ABC is distributed to the fishery components that receive an allocation for the stock. Components of the fishery that receive an allocation have a sub-annual catch limit (sub-ACL) set by reducing their portion of the ABC (the sub-ABC) to account for management uncertainty and are subject to AMs if they exceed their respective catch limit during the fishing year. For GOM cod and haddock only, the U.S. ABC is first divided between the commercial and recreational fisheries, before being further divided into sub-components and sub-ACLs. This process is described fully in appendix II of the Framework 66 Environmental Assessment.

Sector and Common Pool Allocations

For stocks allocated to sectors, the commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in sectors and the cumulative potential sector contributions (PSC) associated with those sectors. The preliminary sector and common pool sub-ACLs proposed in this action are based on fishing year 2023 PSCs and fishing year 2023 sector rosters. All permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2024, to withdraw from a sector and fish in the common pool for the 2024 fishing year. In addition to the enrollment delay, all permits that change ownership after the roster deadline may join a sector (or change sector) through April 30, 2024. If changes to the sector rosters occur, updated catch limits will be announced as soon as possible in the 2024 fishing year to reflect the final sector rosters as of May 1, 2024.

Management Uncertainty Buffer for Sectors

In Framework 66, the Council proposes to remove the management uncertainty buffer for the sector sub-ACL for GOM haddock and white hake, if the ASM coverage target is 90 percent or higher. If approved, this measure would remain in place for the next 2 fishing years, unless the Council sets new specifications for fishing year 2025 based on updated assessments. Based on the current assessment schedule, GOM haddock could receive new specifications for fishing year 2025, and in that situation, this measure would not apply in fishing year 2025 unless the Council included it in that action. White hake is not scheduled to receive new specifications until fishing year 2026. The Council's goal is to mitigate the economic impacts of the ACLs for these two potentially constraining stocks by increasing the sector sub-ACLs if the ASM coverage target is high enough to reduce uncertainty. Amendment 23 (87 FR 75852; December 9, 2022) implemented a measure to set the management uncertainty buffer for the sector sub-ACL for each allocated groundfish stock to zero. In years that the ASM coverage target is set at 100 percent, the management uncertainty buffer will default to zero for the sector sub-ACL for allocated stocks, unless the Council's consideration of the 100-percent coverage target warrants specifying a different management uncertainty buffer in order to prevent exceeding the sub-ACL. The process by which the Council evaluates and sets management uncertainty buffers was unchanged by Amendment 23, and the Council may adjust management uncertainty buffers in future actions.

As established in Amendment 23, the ASM coverage target is dependent on the level of funding for ASM and observers, and NMFS must evaluate overall annual appropriations from Congress to finalize the ASM coverage target. NMFS must also provide the target as soon as it can each year so that sectors can establish their rosters and meet annual deadlines. Therefore, on February 20, 2024, the Regional Administrator announced that the preliminary fishing year 2024 ASM coverage target will be 100 percent. NMFS is currently evaluating whether the preliminary coverage target can be met given the level of 2024 appropriations funding for reimbursing sectors for the cost of monitoring, and

will announce the final ASM coverage target in the final rule.

If this measure removing the management uncertainty buffers for two stocks is approved, and the final ASM coverage target is set between 90 and 99 percent, sectors' sub-ABCs for GOM haddock and white hake would not be reduced to account for the management uncertainty for fishing year 2024 (see table 5, bold stocks). The removal of the management uncertainty buffer for the sectors alone is not likely to cause the ABC or OFL to be exceeded. The fishery would remain accountable for remaining within the sub-ACLs allocated to it. Further, the revised management uncertainty buffers apply only to sectors and not to the common pool component of the fishery or other sub-ACLs or sub-components for any stocks. In the case of GOM haddock, the recreational fishery and common pool fishery would both retain a management uncertainty buffer; for white hake, only the common pool fishery would have a management uncertainty buffer applied. Therefore, a certain level of uncertainty buffer will continue to exist for each stock's ACL.

If the final ASM coverage target is set below 90 percent, this measure would not be in effect for fishing year 2024, and all stocks would have sectors' sub-ABCs reduced to account for management uncertainty (see table 4). If the final ASM coverage target is set at 100 percent for fishing year 2024, sectors' sub-ABCs would not be reduced for any allocated stocks (see table 5). Table 6 displays the ACLs and sub-ACLs for all stocks with the management uncertainty buffer left in place for fishing year 2025, but this would be updated in a future action based on the coverage target for that fishing year.

Common Pool Total Allowable Catches

The common pool sub-ACL for each allocated stock (except for Southern New England/Mid-Atlantic (SNE/MA) winter flounder) is further divided into trimester total allowable catches (TACs). Table 8 summarizes the common pool trimester TACs proposed in this action.

Incidental catch TACs are also specified for certain stocks of concern (*i.e.,* stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (*i.e.,* special access programs (SAP) and the Regular B Days-at-Sea (DAS) Program), in order to limit the catch of these stocks under each program. Tables 9 through 12 summarize the proposed Incidental Catch TACs for each stock and the distribution of these TACs to each special management program.

TABLE 4—PROPOSED CATCH LIMITS FOR THE 2024 FISHING YEAR WITH MANAGEMENT UNCERTAINTY BUFFER LEFT IN PLACE

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
GB Cod	515	386	375	11					43	86
GOM Cod	522	474	271	11	192				48	0
GB Haddock	6,702	6,571	6,422	149		131			0	0
GOM Haddock	2,272	2,194	1,404	31	759	22			48	8.0
GB Yellowtail Flounder	68	56	53	3.0			11.0	1.3	0	0
SNE/MA Yellowtail Flounder	38	33	25	8.1			2.7		0.2	2.0
CC/GOM Yellowtail Flounder	946	876	828	48					30	40
American Plaice	5,247	5,192	5,046	145					28	28
Witch Flounder	1,196	1,146	1,104	41					19	31
GB Winter Flounder	1,503	1,488	1,442	45					0	16
GOM Winter Flounder	772	607	519	88					153	12.1
SNE/MA Winter Flounder	604	441	387	53					19	144
Redfish	7,892	7,892	7,809	83					0	0
White Hake	1,838	1,828	1,810	19					0	10
Pollock	13,299	12,184	12,070	114					627	488
N. Windowpane Flounder	127	94	na	94			27		0.0	6.8
S. Windowpane Flounder	205	30	na	30			71		6.4	98
Ocean Pout	83	49	na	49					0	34
Atlantic Halibut	75	58	na	58					16	1.2
Atlantic Wolffish	87	87	na	87					0	0

na: not allocated to sectors.

TABLE 5—PROPOSED CATCH LIMITS FOR THE 2024 FISHING YEAR WITH MANAGEMENT UNCERTAINTY BUFFER REMOVED FOR SECTORS

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
GB Cod	534	406	395	11					43	86
GOM Cod	536	488	285	11	192				48	0

TABLE 5—PROPOSED CATCH LIMITS FOR THE 2024 FISHING YEAR WITH MANAGEMENT UNCERTAINTY BUFFER REMOVED FOR SECTORS—Continued

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
GB Haddock	7,040	6,909	6,761	149		131			0	0
GOM Haddock	2,346	2,268	1,478	31	759	22			48	8.0
GB Yellowtail Flounder	70	58	55	3.0			11.0	1.3	0	0
SNE/MA Yellowtail Flounder	40	35	27	8.1			2.7		0.2	2.0
CC/GOM Yellowtail Flounder	990	920	872	48					30	40
American Plaice	5,512	5,457	5,312	145					28	28
Witch Flounder	1,254	1,204	1,163	41					19	31
GB Winter Flounder	1,548	1,532	1,487	45					0	16
GOM Winter Flounder	800	635	546	88					153	12.1
SNE/MA Winter Flounder	624	461	408	53					19	144
Redfish	8,303	8,303	8,220	83					0	0
White Hake	1,933	1,923	1,905	19					0	10
Pollock	13,934	12,819	12,705	114					627	488
N. Windowpane Flounder	127	94	na	94			27		0.0	6.8
S. Windowpane Flounder	205	30	na	30			71		6.4	98
Ocean Pout	83	49	na	49					0	34
Atlantic Halibut	75	58	na	58					16	1.2
Atlantic Wolffish	87	87	na	87					0	0

na: not allocated to sectors.

For bold stocks, management uncertainty buffer would be removed if ASM target is 90 percent or higher. For all other allocated stocks, it is removed only if ASM target is 100.

TABLE 6—PROPOSED CATCH LIMITS FOR THE 2025 FISHING YEAR *

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
GB Haddock	5,111	5,011	4,897	113		100			0	0
GOM Haddock	2,183	2,108	1,350	30	729	22			46	8
GB Yellowtail Flounder	68	56	53	3.0			11	1.3	0	0
SNE/MA Yellowtail Flounder	38	33	25	8.1			2.7		0.2	2.0
CC/GOM Yellowtail Flounder	873	808	764	45					28	37
American Plaice	5,009	4,956	4,818	139					26	26
Witch Flounder	1,196	1,146	1,104	41					19	31
GB Winter Flounder	1,446	1,431	1,387	44					0	15
GOM Winter Flounder	772	607	519	88					153	12.1
SNE/MA Winter Flounder	604	441	387	53					19	144
Redfish	7,859	7,859	7,777	82					0	0
White Hake	1,825	1,816	1,797	19					0	10
Pollock	12,683	11,619	11,510	109					598	465
N. Windowpane Flounder	127	94	na	94			27		0.0	6.8
S. Windowpane Flounder	205	30	na	30			71		6.4	98
Ocean Pout	83	49	na	49					0	34
Atlantic Halibut	75	58	na	58					16	1.2
Atlantic Wolffish	87	87	na	87					0	0

na: not allocated to sectors.

* Northeast multispecies stocks not included in table 6 do not have catch limits approved or proposed for fishing year 2025.

TABLE 7—PROPOSED CATCH LIMITS FOR THE 2026 FISHING YEAR *

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A + B + C	A	B	C	D	E	F	G	H
Redfish	7,997	7,997	7,913	84	.....	.....	.....	.....	0	0
N. Windowpane Flounder	127	94	na	94	.....	.....	27	.....	0.0	7
S. Windowpane Flounder	205	30	na	30	.....	.....	71	.....	6	98

na: not allocated to sectors.

* Northeast multispecies stocks not included in table 7 do not have catch limits approved or proposed for fishing year 2026.

TABLE 8—PROPOSED FISHING YEARS 2024–2026 COMMON POOL TRIMESTER TACS

[mt, live weight]

Stock	2024			2025			2026		
	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
GB Cod	3.1	3.7	4.2	.....	.....	.....	.....	.....	.....
GOM Cod	5.2	3.5	1.9	.....	.....	.....	.....	.....	.....
GB Haddock	40.1	49.0	59.4	30.6	37.4	45.3	.....	.....	.....
GOM Haddock	8.3	8.0	14.5	8.0	7.7	13.9	.....	.....	.....
GB Yellowtail Flounder	0.6	0.9	1.5	0.6	0.9	1.5	.....	.....	.....
SNE/MA Yellowtail Flounder	1.7	2.3	4.1	1.7	2.3	4.1	.....	.....	.....
CC/GOM Yellowtail Flounder	27.6	12.6	8.2	25.5	11.6	7.6	.....	.....	.....
American Plaice	107.5	11.6	26.2	102.6	11.1	25.0	.....	.....	.....
Witch Flounder	22.6	8.2	10.3	22.6	8.2	10.3	.....	.....	.....
GB Winter Flounder	3.6	10.9	30.8	3.5	10.5	29.6	.....	.....	.....
GOM Winter Flounder	32.7	33.6	22.1	32.7	33.6	22.1	.....	.....	.....
Redfish	20.7	25.7	36.4	20.6	25.5	36.3	21.0	26.0	36.9
White Hake	7.1	5.8	5.8	7.0	5.7	5.7	.....	.....	.....
Pollock	31.9	39.9	42.1	30.4	38.0	40.2	.....	.....	.....

TABLE 9—PROPOSED COMMON POOL INCIDENTAL CATCH TACS FOR THE 2024–2026 FISHING YEARS

[mt, live weight]

Stock	Percentage of common pool sub-ACL	2024	2025	2026
GB Cod	1.68	0.18	.....	.....
GOM Cod	1	0.11	.....	.....
GB Yellowtail Flounder	2	0.06	0.06	.....
CC/GOM Yellowtail Flounder	1	0.48	0.45	.....
American Plaice	5	7.27	6.94	.....
Witch Flounder	5	2.06	2.06	.....
SNE/MA Winter Flounder	1	0.53	0.53	.....

TABLE 10—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM

Stock	Regular B DAS program (percent)	Eastern U.S./CA haddock SAP (percent)
GB Cod	60	40
GOM Cod	100	n/a
GB Yellowtail Flounder	50	50
CC/GOM Yellowtail Flounder	100	n/a
American Plaice	100	n/a
Witch Flounder	100	n/a
SNE/MA Winter Flounder	100	n/a

TABLE 11—PROPOSED FISHING YEARS 2024–2026 INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM

[mt, live weight]

Stock	Regular B DAS program			Eastern U.S./Canada haddock SAP		
	2024	2025	2026	2024	2025	2026
GB Cod	0.11			0.07		
GOM Cod	0.11			n/a	n/a	n/a
GB Yellowtail Flounder	0.03	0.03		0.03	0.03	
CC/GOM Yellowtail Flounder	0.48	0.45		n/a	n/a	n/a
American Plaice	7.27	6.94		n/a	n/a	n/a
Witch Flounder	2.06	2.06		n/a	n/a	n/a
SNE/MA Winter Flounder	0.53	0.53		n/a	n/a	n/a

TABLE 12—PROPOSED FISHING YEARS 2024–2026 REGULAR B DAS PROGRAM QUARTERLY INCIDENTAL CATCH TACS

[mt, live weight]

Stock	2024				2025				2026			
	1st Quarter (13%)	2nd Quarter (29%)	3rd Quarter (29%)	4th Quarter (29%)	1st Quarter (13%)	2nd Quarter (29%)	3rd Quarter (29%)	4th Quarter (29%)	1st Quarter (13%)	2nd Quarter (29%)	3rd Quarter (29%)	4th Quarter (29%)
GB Cod	0.01	0.03	0.03	0.03								
GOM Cod	0.01	0.03	0.03	0.03								
GB Yellowtail Flounder	0.00	0.01	0.01	0.01	0.00	0.01	0.01	0.01				
CC/GOM Yellowtail Flounder	0.06	0.14	0.14	0.14	0.06	0.13	0.13	0.13				
American Plaice	0.94	2.11	2.11	2.11	0.90	2.01	2.01	2.01				
Witch Flounder	0.27	0.60	0.60	0.60	0.27	0.60	0.60	0.60				
SNE/MA Winter Flounder	0.07	0.15	0.15	0.15	0.07	0.15	0.15	0.15				

Modification to the Accountability Measure Trigger for Atlantic Halibut

As described above, for certain stocks, a portion of the ABC is set aside to account for an estimate of catch by Canadian fisheries. While this is not required by regulation, it has been the practice followed by the groundfish plan development team (PDT) and supported by the SSC and Council for many years. Once the Canadian catch estimate is removed, the resulting amount is called the U.S. ABC. The U.S. ABC is further reduced to provide a buffer for management uncertainty (approximately 5 percent), resulting in the ACL. Currently, if the ACL for Atlantic halibut is exceeded by more than the management uncertainty buffer (*i.e.,* if the U.S. ABC is exceeded), the AMs for the stock are implemented.

Framework 66 proposes to modify the catch threshold for implementing the Atlantic halibut AM. In the situation where the ACL is exceeded by more than the management uncertainty buffer, NMFS would take into account the landings from the Canadian fishery for the last calendar year and determine whether, when combined with the landings by U.S. fisheries (Federal and state), the total ABC had been exceeded as well. Framework 66 does not propose any changes to the AMs themselves, which are a combination of a zero-possession limit and gear-area restrictions.

Considering Canadian landings on a calendar year (rather than the groundfish fishing year, which begins May 1) basis to determine if the total ABC was exceeded would be consistent with how the Canadian catch estimate is set and would ensure Canadian data is available and complete when a total catch evaluation would occur. While NMFS expects the practice followed by the PDT of accounting for Canadian catch as a part of specifications-setting will continue, the modification to this AM catch threshold would not apply in a situation where the U.S. ABC for Atlantic halibut had not been set based on the removal of the Canadian catch estimate from the total ABC.

Temporary Modification to the Catch Threshold for Scallop Fishery Accountability Measures

The scallop fishery has sub-ACLs for GB yellowtail flounder. If the scallop fishery exceeds its sub-ACL, it is subject to AMs that, in general, restrict the scallop fishery in seasons and areas with high encounter rates for this stock. Framework 47 (77 FR 26104; May 2, 2012) set a policy for implementing scallop fishery AMs for groundfish stocks. Currently, the scallop fishery is subject to AMs for these stocks if either: (1) The scallop fishery exceeds its sub-ACL and the total ACL is exceeded; or (2) the scallop fishery exceeds its sub-ACL by 50 percent or more. This policy was intended to provide flexibility for the scallop fishery.

Frameworks 56 (82 FR 35660; August 1, 2017) and 58 (84 FR 34799; July 19, 2019) previously made a change to the policy for GB yellowtail flounder to remove the second catch threshold for the 2017–18 and 2019–20 fishing years, respectively. Framework 66 proposes to reinstate this provision for the 2024 and 2025 fishing years, so that the AMs for GB yellowtail flounder would only be implemented if scallop fishery catch exceeds its sub-ACL by any amount and the total ACL is also exceeded. Unless this proposed modification is extended in a future action, the underlying policy for implementing the scallop fishery's AM for GB cod would be in effect for catches in fishing year 2026 and beyond.

In recent years, a significant portion of the overall ACL has remained uncaught as groundfish vessels have reduced their catch and avoided the stock. If catch leads to exceeding the total ACL, the appropriate AM (depending on the fishery or fisheries

that contributed to the overage) would be put in place to prevent subsequent ACL overages and correct the cause of the overage. This measure provides the scallop fishery with flexibility to adjust to current catch conditions and better achieve optimum yield while still providing an incentive to avoid yellowtail flounder.

Minor, Clarifying Regulatory Changes Under Secretarial Authority

Framework 66 would also make minor, clarifying changes in the regulations. Specifically, this action would revise 50 CFR 648.90(a)(5)(i)(F) to reorganize the section to improve clarity and readability regarding the Atlantic halibut accountability measures.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with Framework 66, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making the final determination, the Regional Administrator will consider the data, views, and comments received during the public comment period.

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action, while also ensuring that the final specifications are in place at the start of the groundfish fishing year on May 1, 2024. Each year setting specifications occurs for some portion of the groundfish stocks. Stakeholders and industry groups are familiar with this process and expect modifications to occur regularly. Further, stakeholder and industry groups have been aware of this action and participated in its development in public meetings throughout the past year. Having a 15-day comment period would improve the likelihood of implementing measures, if approved, on May 1, 2024. A prolonged comment period and subsequent potential delay in implementation would be contrary to the public interest, as it would leave in place default quotas for some stocks that do not already have specifications for fishing year 2024, rather than replacing them with the quotas proposed in this rule, which are based on the most recent, best available science. If the final rule is not implemented by May 1, the fishery would be operating under lower quotas for several stocks than those proposed in Framework 66, and an extended delay could limit economic opportunities for the fishery, as well as lead to confusion and uncertainty. Providing timely access to these stocks is also a potential safely issue. A significant portion of fishing activity occurs in early summer, due to better weather, and, for some smaller vessels, summer may be the only season in which they are able to participate in the fishery.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule would have on small entities, including small businesses, and also determines ways to minimize these impacts. The IRFA includes this CLASSIFICATION and the Summary of Proposed Measures sections of this proposed rule and analyses contained in Framework 66 and its accompanying Environmental Assessment/Regulatory Impact Review/IRFA. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, this Proposed Rule

This action proposes management measures, including annual catch limits, for the multispecies fishery in order to prevent overfishing, rebuild overfished groundfish stocks, and achieve optimum yield in the fishery, as required by the Magnuson-Stevens Act. A complete description of the action, why it is being considered, and the legal basis for this action are contained in Framework 66, and in the **SUPPLEMENTARY INFORMATION** section of this proposed rule under the Summary of Proposed Measures heading, and are not repeated here.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

This proposed rule would impact the commercial and recreational groundfish, Atlantic sea scallop, small-mesh multispecies, Atlantic herring, and large-mesh non-groundfish fisheries. Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, beyond those impacted by the proposed action. Furthermore, multiple-permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of the RFA analysis, the ownership entities, not the individual vessels, are considered to be the regulated entities.

As of June 1, 2023, NMFS had issued 675 commercial limited-access groundfish permits associated with vessels (including those in confirmation of permit history (CPH)), 639 party/charter groundfish permits, 696 limited access and general category Atlantic sea scallop permits, 694 small-mesh multispecies permits, 73 Atlantic herring permits, and 752 large-mesh non-groundfish permits (limited access summer flounder and scup permits). Therefore, this action potentially regulates 3,529 permits. When accounting for overlaps between fisheries, this number falls to 2,029 permitted vessels. Each vessel may be individually owned or part of a larger corporate ownership structure and, for RFA purposes, it is the ownership entity that is ultimately regulated by the proposed action. Ownership entities are identified on June 1st of each year based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Greater Atlantic Region Federal fishing permit. The current ownership data set is based on calendar year 2022 permits and contains gross sales associated with those permits for calendar years 2018 through 2022.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the five years from 2018 through 2022. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the U.S., including for-hire fishing (NAICS code 487210). These entities are classified as small businesses if combined annual receipts are not in excess of $8.0 million for all of an entity's affiliated operations. As with commercial fishing businesses, the annual average of the three most recent years (2018–2022) is utilized in determining annual receipts for

businesses primarily engaged in for-hire fishing.

Based on the ownership data, 1,538 distinct business entities hold at least one permit that the proposed action potentially regulates. All 1,538 business entities identified could be directly regulated by this proposed action. Of these 1,538 entities, 871 are commercial fishing entities, 291 are for-hire entities, and 376 did not have revenues (were inactive in 2022). Of the 871 commercial fishing entities, 860 are categorized as small entities and 11 are categorized as large entities, per the NMFS guidelines. Furthermore, 520 of these commercial fishing entities held limited access groundfish permits, with 516 of these entities being classified as small businesses and 4 of these entities being classified as large businesses. All 291 for-hire entities are categorized as small businesses.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule

The proposed action does not contain any new collection-of-information requirements under the Paperwork Reduction Act (PRA).

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The economic impacts of each proposed measure are discussed in more detail in sections 6.5 and 7.12 of the draft Framework 66 Environmental Assessment (see **ADDRESSES**) and are not repeated here. We note that, overall, for the updated groundfish specifications and the modifications to the accountability measures in this proposed rule, the No Action alternative was the only other alternative considered by the Council. There are no significant alternatives that would minimize the economic impacts. The proposed action is predicted to generate $40.8 million in gross revenues for the sector portion of the commercial groundfish trips. This amount is $20.4 million more than the amount of gross revenues under the No Action alternative, but $3.9 million less than the amount of gross revenues generated in fishing year 2022. Small entities engaged in common pool groundfish fishing are expected to be positively impacted by the proposed action as well, relative to the No Action alternative. Small entities engaged in the recreational groundfish fishery are likely to be negatively impacted by the decrease in the GOM haddock sub-ACL. Sub-ACL decreases for groundfish stocks allocated to the Atlantic sea scallop fishery and the large-mesh non-groundfish fishery may negatively affect small entities engaged in those fisheries. The proposed temporary modification to the scallop fishery's AM trigger for GB yellowtail flounder for fishing years 2024 and 2025 will reduce the likelihood of negative impacts to the scallop fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping, and reporting requirements.

Dated: March 18, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.90, revise paragraph (a)(5)(i)(F) and add paragraph (a)(5)(iv)(B) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(F) *Atlantic halibut.* If NMFS determines, as described in paragraph (a)(5)(i)(D) of this section, that the overall ACL for Atlantic halibut is exceeded by catch from U.S. Federal and state fisheries by any amount greater than the management uncertainty buffer and, after accounting for the amount of landings of Atlantic halibut from Canadian fisheries, as appropriate, that the total ABC for Atlantic halibut has also been exceeded, the applicable AM shall be implemented as described in paragraph (a)(5)(i)(F)(*1*) of this section. If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and there are AMs for that fishery, the multispecies fishery AM shall only be implemented if the sub-ACL allocated to the multispecies fishery is exceeded (*i.e.,* the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

(*1*) *Description of AM.* When the AM is implemented, any vessel issued a Federal permit for any fishery management plan may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented, as specified in paragraph (a)(5)(i)(F) of this section, unless otherwise specified in paragraph (a)(5)(i)(F)(*2*) of this section. Additionally, the applicable AM areas, as defined in paragraph (a)(5)(i)(F)(*4*) of this section, shall be implemented as follows: Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6); except that selective trawl gear is not required in the portion of the Trawl Gear AM Area between 41 degrees 40 minutes and 42 degrees from April 1 through July 31. When in effect, a limited access NE multispecies permitted vessel with gillnet gear may not fish or be in the Atlantic Halibut Fixed Gear AM Area from March 1 through October 31, unless transiting with its gear stowed and not available for immediate use as defined in § 648.2, or such gear was approved consistent with the process defined in § 648.85(b)(6).

(*2*) *Vessels exempt from the no possession AM.* Vessels issued only a charter/party permit, and/or an Atlantic highly migratory species angling permit, and/or an Atlantic highly migratory species charter/headboat permit are exempt from the no possession AM. This exemption does not apply to any vessel that is issued any other permit that is subject to the AM. For example, a vessel issued a Northeast multispecies charter/party permit and a bluefish charter/party permit would be exempt from the no possession AM, but a vessel issued a Northeast multispecies charter/party permit and a commercial bluefish permit would not be exempt from the no possession AM.

(*3*) *Review of the AM.* If the overall ACL is exceeded by more than 20

percent, the Council shall revisit the AM in a future action.

(*4*) *Atlantic halibut AM area.* The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted.

TABLE 1 TO PARAGRAPH (a)(5)(i)(F)(*4*)

Atlantic halibut trawl gear AM area		
Points	N latitude	W longitude
1	42°00′	69°20′
2	42°00′	68°20′
3	41°30′	68°20′
4	41°30′	69°20′

TABLE 2 TO PARAGRAPH (a)(5)(i)(F)(*4*)

Atlantic halibut gillnet gear AM area		
Points	N latitude	W longitude
1	43°10′	69°40′
2	43°10′	69°30′
3	43°00′	69°30′
4	43°00′	69°40′

* * * * *

(iv) * * *

(B) *2024 and 2025 fishing year threshold for implementing the Atlantic sea scallop fishery AM for GB yellowtail flounder.* For the 2024 and 2025 fishing years, if scallop fishery catch exceeds the GB yellowtail flounder sub-ACL specified in paragraph (a)(4) of this section, and total catch exceeds the overall ACL for that stock, then the applicable scallop fishery AM will take effect, as specified in § 648.64 of the Atlantic sea scallop regulations. For the 2026 fishing year and onward, the threshold for implementing scallop fishery AMs for GB yellowtail flounder will return to that listed in paragraph (a)(5)(iv)(A) of this section.

* * * * *

[FR Doc. 2024–06103 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 57
Friday, March 22, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Reinstatement

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and reinstatement under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by April 22, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Tart Cherries Grown in the States of MI, NY, PA, OR, UT, WA, and WI.

OMB Control Number: 0581–0177.

Summary of Collection: Marketing Order No. 930 (7 CFR part 930) regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The Agricultural Marketing Agreement Act of 1937 authorizes the promulgation and amendment of marketing orders for certain agricultural commodities and the issuance of regulations thereof for the purpose of providing orderly marketing conditions in interstate and intrastate commerce and for improving returns to producers. The primary objective of the Order is to stabilize the supply of tart cherries. Only tart cherries that will be canned or frozen will be regulated. The Order is administered by an 18-member Board comprised of producers, handlers and one public member, plus alternates for each. The members will serve for a three-year term of office.

Need and Use of the Information: Various forms were developed by the Board for persons to file required information relating to tart cherry inventories, shipments, diversions and other needed information to effectively carry out the requirements of the Order. The information collected is used to ensure compliance, verify eligibility, and vote on amendments, monitor and record grower's information. Authorized Board employees and the industry are the primary users of the information. If information were not collected, it would eliminate needed data to keep the industry and the Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for profit; not-for-profit institutions.

Number of Respondents: 640.

Frequency of Responses: Reporting: Annually; Quarterly; On occasion.

Total Burden Hours: 741.

Agricultural Marketing Service

Title: AMS Grant Programs.

OMB Control Number: 0581–0240.

Summary of Collection: In 2016, OMB approved 0581–0240 which combined five grant programs (1) the Federal-State Marketing Improvement Program (FSMIP), (2) the Farmers Market, (3) the Local Food Promotion Program (FMLFPP), (4) the Specialty Crop Multi-State Program (SCMP), and (5) the Specialty Crop Block Grant Program (SCBGP) into a single collection package entitled AMS Grant Programs. This renewal request is to extend AMS' current approval to collect information for these five grant programs and to add four additional grant programs to this collection. The four new grant programs are the Dairy Business Innovation (DBI) Initiatives, Regional Food System Partnerships (RFSP), the Sheep Production and Marketing Grant Program (SPMGP), and the Acer Access and Development Program (Acer).

All the grant programs are authorized pursuant to the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621, *et seq.*) and the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001) are implemented through the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super Circular) (2 CFR 200).

Need and Use of the Information: The information collected is needed to certify that grant participants are complying with applicable program regulations, and the data collected are the minimum information necessary to effectively carry out the requirements of the program. The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and for AMS to administer these programs. The purpose of AMS Grant Programs is to provide grants to eligible entities. Without the required information, AMS will not be able to review, award, reimburse, or monitor grants to eligible applicants.

Description of Respondents: State, local or Tribal government.

Number of Respondents: 5,367.

Frequency of Responses: Recordkeeping; Reporting: Annually; Semi-annually.

Total Burden Hours: 24,469.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–06060 Filed 3–21–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0021]

Bayer; Availability of a Draft Environmental Impact Statement and a Draft Plant Risk Assessment for Determination of Nonregulated Status for Maize Developed Using Genetic Engineering for Dicamba, Glufosinate, Quizalofop, and 2,4-Dichlorophenoxyacetic Acid Resistance, With Tissue-Specific Glyphosate Resistance Facilitating the Production of Hybrid Maize Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has prepared a draft environmental impact statement (EIS) and draft plant pest risk assessment (PPRA) evaluating the potential environmental impacts and plant pest risk that may result from the approval of a petition for nonregulated status for maize developed using genetic engineering for dicamba, glufosinate, quizalofop, and 2,4-dichlorophenoxyacetic resistance with tissue-specific glyphosate resistance facilitating the production of hybrid maize seed. We are making the draft EIS and draft PPRA available for public review and comment.

DATES: We will consider all comments that we receive on or before May 6, 2024.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2020–0021 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0021, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The petition and any comments we receive on this docket may be viewed at *Regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Tangredi, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; phone (301) 851–4061; email: *joseph.tangredi@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Movement of Organisms Modified or Produced Through Genetic Engineering,'' regulate, among other things, the importation, interstate movement, or release into the environment of organisms modified or produced through genetic engineering that are plant pests or pose a plausible plant pest risk.

The petition for nonregulated status described in this notice is being evaluated under the version of the regulations effective at the time that it was received. The Animal and Plant Health Inspection Service (APHIS) issued a final rule, published in the **Federal Register** on May 18, 2020 (85 FR 29790–29838, Docket No. APHIS–2018–0034),[1] revising 7 CFR part 340. However, the final rule was implemented in phases. The new Regulatory Status Review (RSR) process, which replaces the petition for determination of nonregulated status process, became effective on April 5, 2021, for corn, soybean, cotton, potato, tomato, and alfalfa. The RSR process became effective for all crops as of October 1, 2021. However, ''[u]ntil RSR is available for a particular crop . . . APHIS will continue to receive petitions for determination of nonregulated status for the crop in accordance with the [legacy] regulations at 7 CFR 340.6'' (85 FR 29815). This petition for a determination of nonregulated status is being evaluated in accordance with the regulations at 7 CFR 340.6 (2020) as it was received by APHIS on June 27, 2019.

Bayer submitted a petition (APHIS Petition Number 19–316–01p) to APHIS seeking a determination of nonregulated status for a maize[2] (identified as MON 87429) that has been developed using genetic engineering for dicamba, glufosinate, quizalofop, and 2,4-dichlorophenoxyacetic acid (2,4-D) resistance with tissue-specific glyphosate resistance facilitating the production of hybrid maize seed. The Bayer petition stated that MON 87429 maize is unlikely to pose a plant pest risk and, therefore, should not be regulated under APHIS' regulations at 7 CFR part 340.

According to our process[3] for soliciting public comment when considering petitions for determination of nonregulated status of regulated organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. On May 8, 2020, APHIS announced the availability of the Bayer petition for public comment in the **Federal Register**[4] (85 FR 27354–27355, Docket No. APHIS–2020–0021). APHIS solicited comments on the petition for 60 days ending July 7, 2020, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We received 4,112 comments by the close of the comment period.

Based on comments received on the petition and new information that APHIS became aware of after our May 8, 2020, **Federal Register** publication, we determined that an environmental impact statement (EIS), as opposed to an environmental assessment, was the appropriate National Environmental Policy Act (NEPA) analysis for the Bayer petition. Specifically, APHIS became aware of new information regarding potential issues with dicamba spray drift and volatilization and associated potential economic impacts, and the Environmental Protection Agency's (EPA) issuance of a cancellation order on June 8, 2020, for three products (Xtendimax with Vaporgrip Technology, EPA Reg. No. 524–6 17, Engenia, EPA Reg. No. 7969–345, and FeXapan, EPA Reg. No. 352–9 13) that contain dicamba. Additionally, on October 27, 2020, the EPA approved limited 5-year registrations for two end-use dicamba products and the extension of the registration for one dicamba product

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2018–0034 in the Search field.

[2] Maize is the common botanical term used globally for the cereal plant *Zea mays.* In the United States, maize is also referred to as corn. Both terms are used interchangeably in this document. For consistency with the common plant name and petition, APHIS uses the term maize, but also refers to corn in certain instances, such as in reference to food products.

[3] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for organisms developed using genetic engineering. To view the notice, go to *www.regulations.gov* and enter APHIS–2011–0129 in the Search field.

[4] To view the notice, its supporting documents, or the comments that we received, go to *www.regulations.gov* and enter APHIS–2020–0021 in the Search field.

(EPA Reg. Nos. 100–1623, 264–1210, and 7969–472).

On April 28, 2021, APHIS published a notice of intent (NOI) in the **Federal Register** (86 FR 22384–22386, Docket No. APHIS–2020–0021), announcing that as part of our evaluation of the Bayer petition, we planned to prepare an EIS to consider the potential impacts of a determination of nonregulated status for MON 87429 maize on the human environment.[5]

APHIS solicited public comment for a period of 30 days, ending May 28, 2021, as part of its scoping process to identify issues to address in the draft EIS. On June 30, 2021, APHIS announced in the **Federal Register** (86 FR 34714–34715, Docket No. APHIS–2020–0021) that the comment period was reopened for 30 days to allow interested persons additional time to prepare and submit comments until July 30, 2021. APHIS received a total of 3,069 comments by the end of the comment period.

Comments received were from the agricultural industry, nongovernmental organizations, Tribal governments, and individuals. The most common topics and issues of concern raised in the comments received on the NOI for the draft EIS included: The potential for dicamba or 2,4–D drift to adversely impact crops not resistant to these herbicides, as well as adversely impact wild plants and plants on residential and commercial properties; the potential economic impacts of herbicide drift on crop and non-crop plants; herbicide-resistant crops and their influence on herbicide use; the potential for development of weed resistance to herbicides; potential effects of pesticides on the soil microbiome, pollinators, wildlife, biodiversity, and endangered species; potential effects on Tribal nations, including Tribal nation corn production, indigenous corn varieties, and food sovereignty; and potential benefits of MON 87429 corn in weed and herbicide resistant weed management, and U.S. corn production.

APHIS evaluated all comments received on the NOI in developing the draft EIS. A summary of the comments received and APHIS response to comments are provided in appendix 1 of the draft EIS.

Because the introduced trait genes in MON 87429 maize are involved in weed management, and considering public comments received on the NOI, the primary topics of focus in the draft EIS, in relation to potential impacts on the human environment are: (1) Weed and herbicide resistant weed management, (2) herbicide use with MON 87429 maize, (3) the potential effects of exposure to the introduced trait genes and gene products on human health and wildlife, (4) gene flow and potential weediness of MON 87429 maize, and (5) potential socioeconomic impacts.

The draft EIS has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). APHIS is making available the draft EIS, as well as a draft plant pest risk assessment (PPRA), for a 45-day public review and comment period. The draft EIS and draft PPRA are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**.

A notice of availability regarding the draft EIS will also be published by the Environmental Protection Agency in the **Federal Register**.

Done in Washington, DC, this 11th day of March 2024.

Donna Lalli,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–06050 Filed 3–21–24; 8:45 am]

BILLING CODE 3410–34–P

[5] The National Environmental Policy Act as amended, and Council on Environmental Quality NEPA implementing regulations at 40 CFR 1500–1508 require Federal agencies to thoroughly assess the potential environmental consequences of federal actions on the ''human environment''. Human environment means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment. Impacts/effects include ecological (such as effects on natural resources, and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health effects (see 40 CFR 1508.1).

DEPARTMENT OF AGRICULTURE

Forest Service

Prince William Sound Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Prince William Sound Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Chugach National Forest within boroughs associated with the Prince William Sound RAC, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in person and virtual meeting will be held on Sunday, April 7, 2024, at 8:30 a.m. to 5:00 p.m., Alaska daylight time (AKDT).

Written and Oral Comments: Anyone wishing to provide in-person and/or virtual oral comments must pre-register by 5:00 p.m. AKDT on April 5, 2024. Written public comments will be accepted by 11:59 p.m. AKDT on April 6, 2024. Comments submitted after this date will be provided to the Forest Service, but the committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person and virtually at the Cordova Ranger District, located at 612 Second Street, Cordova, Alaska 99574. RAC information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/r10/workingtogether/advisorycommittees/?cid=fseprd1127267* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *tanya.zastrow@usda.gov or* via mail (*i.e.,* postmarked) to Tanya Zastrow, P.O. Box 280, Cordova, Alaska 99574. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. AKDT, April 5, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *tanya.zastrow@usda.gov* or via mail (*i.e.,* postmarked) to Tanya Zastrow, P.O. Box 280, Cordova, Alaska 99574.

FOR FURTHER INFORMATION CONTACT: Steven Namitz, Designated Federal Officer (DFO), by phone at 907–424–4747 or email at *steven.namitz@usda.gov* or Tanya Zastrow, RAC Coordinator, at 907–424–4722 or email at *tanya.zastrow@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents; and

2. Review and recommend projects for funding under the Secure Rural Schools allocations to the Prince William Sound area.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: March 18, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–06107 Filed 3–21–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Fermi Research Alliance, et al., Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before April 11, 2024. Address written comments to Statutory Import Programs Staff, Room 41006, U.S. Department of Commerce, Washington, DC 20230. Please also email a copy of those comments to *Dianne.Hanshaw@trade.gov.*

Docket Number: 24–001. Applicant: Fermi Research Alliance, P.O. Box 500, Batavia, IL 60510. Instrument: Helium Refrigeration/Liquification Plant and accompanying accessories. Manufacturer: Air Liquide, France. Intended Use: The PIP II linear accelerator will provide unparalleled achievement in particle acceleration. These accelerated particles will be born at the FNAL site in Batavia, IL and accelerated via the PIP II linear accelerator through the Earth approximately 900 miles west into the Deep Underground Neutrino Experiment (DUNE) located in Lead, SD, to discover whether neutrinos violate the fundamental matter-antimatter symmetry of physics. The design, research, development, and results from the construction and use of the PIP II Linear Accelerator will be the subject of high energy physics and physics engineering courses at dozens of domestic and international institutions of higher education. No specific course titles are available at this time, but the information will be extensively discussed and challenged at college and university classrooms for years to come. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: December 19, 2023.

Docket Number: 24–002. Applicant: Washington University in St. Louis, One Brookings Drive, St. Louis, MO 63130–4899. Instrument: Two-Dimensional Material Metallographic Microscopic Transfer System. Manufacturer: HIGH HOPE ZHONGDING CORPORATION, China. Intended Use: The instrument is intended to be used for all general two-dimensional (2D) materials like graphene, molybdenum sulfide, black phosphorus, 2D magnetic et al., to perform a comprehensive set of optical experiments aimed at elucidating optical and magnetic properties of superlattices based on 2D materials et al. The main objective is to create new quantum materials as designed, to study exotic quantum states, which is crucial for the evolution of optical, electronic and information technologies of the future. This transfer stage is particularly developed for cutting-edge technology in the fabrication and manipulation of two-dimensional materials, which is crucial for researchers in these fields. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 3, 2024.

Docket Number: 24–003. Applicant: University of Colorado JILA Department, Campus Box 440 UCB, JILA Building, Room S/175, Boulder, CO 80309. Instrument: Narrow Linewidth Laser. Manufacturer: Shanghai Precilasers Technology Co, Ltd., China. Intended Use: The instrument will be intended to be used for Quantum simulation using Lithium atoms in a cryogenic environment. Ultracold Lithium atoms will be used for studies of the Fermi-Hubbard model, which are an ideal platform for such studies due to their broadly tunable interactions with Feshbach resonances. Observation will determine whether low temperature phases of the Fermi-Hubbard model can be revealed by performing our experiments within a cryogenically pumped environment to improve the evaporatively cooled gas temperatures due to suppression of hole-induced heating. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 17, 2024.

Docket Number: 24–004. Applicant: University of Colorado JILA Department, 1900 Colorado Avenue, Campus Box 440 UCB, Boulder, CO 80309. Instrument: Fiber Laser. Manufacturer: Shanghai Precilasers Technology Co., China. Intended Use: The instrument is intended to be used for research that will be conducted on barely interacting Strontium (Sr) atoms confined and cooled by lasers down to extremely cold temperatures, below 1 microkelvin. The frequency of transition to a highly stable state in Sr atoms can be used as the reference of the unit of time. To realize the atomic clock operation, precision quantum spectroscopy experiment will be performed to measure the transition frequency. The laser claimed for the duty-exemption is an 813 nm fiber laser module with a single-mode continuous-wave (CW) output power of 10 W, which will be used for setting up the 813 nm magic-wavelength optical lattice for our experiment. The Sr atoms are thus confined in each lattice node while showing minimally perturbed transition frequency. The research is conducted by graduated students at the University of Colorado as field training in their degree programs. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 23, 2024.

Docket Number: 24–005. Applicant: University of Florida, P.O. Box 118525, Gainesville, FL 32611. Instrument: UniPrep2 for determining hydrogen isotopic composition. Manufacturer: EuroVectro, Italy. Intended Use: The instrument Uniprep2 is intended to be used in the measurement of hydrogen isotope composition of complex organic samples to control hydrogen-isotope exchange and for sample drying and vapor equilibration. The properties of the materials studied are that they have exchangeable hydrogen and residual moisture contamination. This instrument helps to address those complications that can have biased results. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 25, 2024.

Docket Number: 24–006. Applicant: University of Colorado JILA Department, Campus Box 440 UCB, JILA Building, Room S/175, Boulder, CO 80309. Instrument: Narrow linewidth laser@2923nm. Manufacturer: Shanghai Precilasers Technology Co., Ltd, China. Intended Use: The instrument is intended to be used to study continuous superradiant lasing from Stontium atoms. The lasing will induced in part using the lasing system purchased. The laser will be used to perform experiments that will demonstrate (for the first time anywhere) continuous superradiant lasing. The laser will be used to cool the atoms to a few millionths of a degree above absolute zero. To achieve these goals, we require a narrow linewidth laser source (<50kHz) with high output power (>400mW) at 2923 nm for laser cooling and trapping Strontium atoms using the internal levels 3P2 to 3D3. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 32, 2024.

Docket Number: 24–007. Applicant: University of Massachusetts Amherst, Department of Polymer Science and Engineering, 120 Governors Drive, Amherst, MA 01003. Instrument: Food Elasticity Measurement System. Manufacturer: Changfu Technology (Beijing) Company, Ltd., China. Intended Use: The instrument is intended to be used for rubber elasticity—The system allows for measuring properties such as elastic modulus, stress-strain relationship, and resilience of rubber materials; Food texture temperature response and elasticity, with the temperature control unit, the system enables studying how food textures change in elasticity and firmness with temperature variations; and Polymer glass thermal analysis—the system's thermal analysis capabilities facilitate the examination of heat conduction properties in polymer glasses, including thermal conductivity and heat transfer behavior. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 31, 2024.

Docket Number: 24–008. Applicant: Harvard University, Department of Physics, 17 Oxford Street, Jefferson Laboratory, Cambridge, MA 02138. Instrument: (1) 703nm single frequency fiber laser, (1) 1080nm single-frequency fiber laser. Manufacturer: Shanghai Precilaser Technology, Co., Ltd., China. Intended Use: The instruments are intended to be used in support of the Advanced Cold Molecule Electron Electric Dipole Moment Experiment (ACME EDM experiment), a collaborative physics experiment now between Harvard University, Northwestern University, and University of Chicago. The goal of the ACME project is to shed light on the reasons for why there is more matter than antimatter in the universe through the measurement of properties of the Thorium-232 Monoxide molecules. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: February 7, 2024.

Dated: March 18, 2024.

Gregory W. Campbell,

Director, Subsidies and Economic Analysis, Enforcement and Compliance.

[FR Doc. 2024–06131 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–17A001]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review to Aerospace Industries Association of America, Inc., Application No. 92–17A001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA), issued an amended Export Trade Certificate of Review (Certificate) to Aerospace Industries Association of America, Inc., on March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis (OTEA), International Trade Administration, (202) 482–5131 (this is not a toll free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011–21) (the Act) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**.

Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Aerospace Industries Association of America, Inc.'s Certificate has been amended as follows:

1. Added the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

- Albany Engineered Composites; Rochester, NH (controlling entity Albany International Corp.; Rochester, NH)
- ALTEN Technology USA, Inc.; Troy, MI (controlling entity The ALTEN Group; Boulogne-Billancourt, France)
- Archer Aviation Inc.; Palo Alto, CA
- ATLAS Space Operations, Inc.; Traverse City, MI
- Bain & Company, Inc.; Boston, MA
- BlackSky Technology Inc.; Herndon, VA
- Chicago Precision, Inc.; Elk Grove Village, IL
- Cre8tive Technology and Design, Inc.; San Diego, CA
- Deltek, Inc.; Herndon, VA
- Epirus, Inc.; Los Angeles, CA
- Estes Energetics; Penrose, CO
- ExoAnalytic Solutions Inc.; Foothill Ranch, CA
- GKN Aerospace North America; Westlake, TX (controlling entity GKN Aerospace Services Limited Solihull, UK)
- GXA Consulting LLC; Ely, IA
- Ivis Technologies, LLC; Phoenix, AZ
- Janes Capital Partners, Inc.; Irvine, CA
- LeoLabs, Inc.; Menlo Park, CA
- LOAR Group; White Plains, NY
- MapLarge, Inc.; Atlanta, GA
- Merlin Labs, Inc.; Boston, MA
- Overair, Inc.; Santa Ana, CA
- Primer AI; Arlington, VA
- RCM Technologies, Inc.; Pennsauken, N.J.
- Riveron Consulting, LLC; Dallas, TX
- Rocket Lab USA, Inc.; Long Beach, CA
- Shift5; Rosslyn, VA
- Slingshot Aerospace, Inc.; Austin, TX
- The Haskell Company; Jacksonville, FL
- TransDigm Group, Inc.; Cleveland, OH
- True Anomaly; Centennial, CO
- TTM Technologies Inc.; Santa Ana, CA
- United Launch Alliance; Centennial, CO
- Ursa Major Technologies, Inc.; Berthoud, CO
- Weldaloy Specialty Forgings; Warren, MI
- Westinghouse Electric Company LLC; Cranberry Township, PA

2. Removed the following companies as Members of AIA's Certificate:

- ADDMAN Tech Production Center
- Aernnova Aerospace
- Aerojet Rocketdyne
- AMETEK Pacific Design Technologies
- Apex International Management Company
- Astronics Corporation
- Avascent
- CAE USA
- ENSCO, Inc.
- Ferra Aerospace, Inc.
- IBM Corporation
- Metis Flight Research Associates
- Microsoft Azure
- MTI Motion
- Net-Inspect, LLC
- Plexus Corporation
- PTC Inc.
- SB Technology, Inc.
- Sunbelt Design and Development, Inc.
- SysArc Inc.
- Tip Technologies
- Virgin Orbit Holdings, Inc.

3. Changed names or addresses for the following Members:

- ATI Defense of Pittsburgh, PA is now ATI Inc. located in Dallas, TX.
- AUSCO, Inc. of Port Washington, NY is now located in Farmingdale, NY.
- Exosonic, Inc. of Los Angeles, CA is now located in Torrance, CA.
- General Electric Aviation of Cincinnati, OH is now GE Aerospace at the same location.
- Parker Meggitt USA Inc. of Simi Valley, CA is now Parker Aerospace at the same location.
- Raytheon Technologies Corporation of Arlington, VA is now RTX Corporation at the same location.
- Securitas Critical Information Services, Inc. of Springfield, VA is now located in Herndon, VA.
- Sierra Space Corporation of Broomfield, CO is now Sierra Nevada Corporation located in Sparks, NV.
- Verify, Inc. of Irvine, CA is now located in Costa Mesa, CA.

List of Members, as Amended

- 3M Company; St. Paul, MN
- AAR Corp.; Wood Dale, IL
- Accenture; Chicago, IL
- Acorn Growth Companies, LLC; Oklahoma City, OK
- Acutec Precision Aerospace, Inc.; Meadville, PA
- ACUTRONIC USA, Inc.; Pittsburgh, PA
- ADI American Distributors LLC; Randolph, NJ
- Advanced Logistics for Aerospace (ALA); Bethpage, NY
- AeroMed Group; Charlotte, NC
- Aero-Mark, LLC; Ontario, CA
- AeroVironment, Inc.; Arlington, VA
- Aireon LLC; McLean, VA
- Albany Engineered Composites, Rochester, NH
- AlixPartners, LLP; New York, NY
- Allied Telesis, Inc.; Bothell, WA
- ALTEN Technology USA, Inc., Troy, MI
- Alvarez & Marsal Holdings, LLC, New York, NY
- Amazon.com Inc.; Seattle, WA
- American Pacific Corporation; Cedar City, UT
- Ansys, Inc.; Canonsburg, PA
- Applied Composites; Lake Forest, CA
- Archer Aviation Inc.; Palo Alto, CA
- Astronautics Corporation of America; Oak Hill, WI
- Astroscale U.S. Inc.; Denver, CO
- AT Kearney Public Sector and Defense Services; Arlington, VA
- Athena Manufacturing, LP; Austin, TX
- ATI Inc.; Dallas, TX
- ATLAS Space Operations, Inc.; Traverse City, MI
- Aura Network Systems, Inc.; McLean, VA
- AUSCO, Inc.; Farmingdale, NY
- Aviation Management Associates, Inc.; Washington, DC
- BAE Systems, Inc.; Falls Church, VA
- Bain & Company, Inc.; Boston, MA
- Ball Aerospace & Technologies Corp.; Boulder, CO
- Belcan Corporation; Cincinnati, OH
- Beta Technologies; South Burlington, VT
- BlackSky Technology Inc.; Herndon, VA
- Boom Technology, Inc.; Denver, CO
- Booz Allen Hamilton; McClean, VA
- Boston Consulting Group; Boston, MA
- BRPH Architects Engineers, Inc.; Melbourne, FL
- Burns & McDonnell Engineering Corporation, Inc.; Kansas City, MO
- BWX Technologies, Inc.; Lynchburg, VA
- CADENAS PARTsolutions, LLC; Cincinnati, OH
- Cadence Design Systems, Inc.; San Jose, CA
- Capewell Aerial Systems; South Windsor, CT
- Capgemini; New York, NY
- Celestica Inc.; Toronto, Canada
- Chicago Precision, Inc.; Elk Grove Village, IL
- Click Bond, Inc.; Carson City, NV
- Cobham Advanced Electronic Solutions (CAES); Arlington, VA
- COMSPOC Corporation; Exton, PA
- CPI Aerostructures, Inc.; Edgewood, NY
- Crane Aerospace & Electronics; Lynnwood, WA

- Cre8tive Technology and Design, Inc.; San Diego, CA
- Deloitte Consulting LLP; New York, NY
- Deltek, Inc.; Herndon, VA
- Ducommun Incorporated; Santa Ana, CA
- DXC Technology Company, Ashburn, VA
- Eaton Corporation; Cleveland, OH
- Elbit Systems of America, LLC; Fort Worth, TX
- Electra.aero; Manassas, VA
- Embraer Aircraft Holding Inc.; Fort Lauderdale, FL
- Enjet Aero, LLC; Overland Park, KS
- Epirus, Inc.; Los Angeles, CA
- EPS Corporation; Tinton Falls, NJ
- Ernst & Young LLP; New York, NY
- Estes Energetics; Penrose, CO
- ExoAnalytic Solutions Inc.; Foothill Ranch, CA
- Exosonic, Inc.; Torrance, CA
- Exostar LLC; Herndon, VA
- FTG Circuits, Inc.; Chatsworth, CA
- GE Aerospace; Cincinnati, OH
- General Atomics Aeronautical Systems, Inc.; Poway, CA
- General Dynamics Corporation; Reston, VA
- GKN Aerospace North America; Westlake, TX
- Google, LLC; Mountain View, CA
- GSE Dynamics, Inc.; Hauppauge, NY
- GXA Consulting LLC; Ely, IA
- HCL America Inc.; Sunnyvale, CA
- HEICO Corporation; Hollywood, FL
- Hexcel Corporation; Stamford, CT
- Honeywell Aerospace; Phoenix, AZ
- Howmet Aerospace Inc.; Pittsburgh, PA
- Huntington Ingalls Industries, Inc.; Newport News, VA
- Infosys; Richardson, TX
- Interos, Inc.; Arlington, VA
- Iron Mountain, Inc.; Boston, MA
- Ivis Technologies, LLC; Phoenix, AZ
- Jabil Defense & Aerospace Services LLC; St. Petersburg, FL
- Janes Capital Partners, Inc.; Irvine, CA
- Joby Aviation, Inc.; Santa Cruz, CA
- Kaman Corporation; Bloomfield, CT
- KPMG LLP; New York, NY
- Kratos Defense & Security Solutions, Inc.; Round Rock, TX
- L3Harris Technologies, Inc.; Melbourne, FL
- Leidos, Inc; Reston, VA
- LeoLabs, Inc.; Menlo Park, CA
- LOAR Group; White Plains, NY
- LS Technologies, LLC; Fairfax, VA
- MapLarge, Inc.; Atlanta, GA
- Marotta Controls, Inc.; Montville, NJ
- Mercury Systems, Inc.; Andover, MA
- Merlin Labs, Inc.; Boston, MA
- Microchip Technology Incorporated; Chandler, AZ
- National Technical Systems, Inc.; Calabasas, CA
- New England Air Foil Products, Inc.; Farmington, CT
- Nimbis Services, Inc.; Oro Valley, AZ
- Nokia US; Murray Hill, NJ
- Norsk Titanium US Inc.; Plattsburgh, NY
- Northrop Grumman Corporation; Falls Church, VA
- Oliver Wyman Inc.; New York, NY
- O'Neil & Associates, Inc.; Miamisburg, OH
- Overair, Inc.; Santa Ana, CA
- Pacific Forge Incorporated; Fontana, CA
- Parker Aerospace; Simi Valley, CA
- PCX Aerosystems; Santa Ana, CA
- Perryman Company; Houston, PA
- PPG Aerospace-Sierracin Corporation; Sylmar, CA
- Primer AI; Arlington, VA
- PWC Aerospace & Defense Advisory Services; McLean, VA
- RCM Technologies, Inc.; Pennsauken, NJ
- RTX Corporation; Arlington, VA
- Reaction Engines, Inc.; Denver, CO
- Relativity Space, Inc.; Long Beach, CA
- Reliable Robotics Corporation; Mountain View, CA
- Rhinestahl Corporation; Mason, OH
- Riveron Consulting, LLC; Dallas, TX
- Rocket Lab USA, Inc.; Long Beach, CA
- Rolls-Royce North America Inc.; Reston, VA
- Salesforce, Inc.; San Francisco, CA
- SAP America, Inc.; Newtown Square, PA
- Securitas Critical Infrastructure Services, Inc.; Herndon, VA
- Shift5; Rosslyn, VA
- SI2 Technologies; North Billerica, MA
- Siemens Government Technologies, Inc.; Reston, VA
- Sierra Nevada Corporation; Sparks, NV
- SkyThread Corporation; Irvine, CA
- Slingshot Aerospace, Inc.; Austin, TX
- Solvay; Alpharetta, GA
- Spartronics LLC; Williamsport, PA
- Special Aerospace Services, LLC; Boulder, CO
- Spirit AeroSystems; Wichita, KS
- Spright; Gilbert, AZ
- Stratolaunch LLC; Mojave, CA
- Supernal LLC; Washington, DC
- SupplyOn North America, Inc.; Greer, SC
- Synergetic Technologies Group, Inc.; La Verne, CA
- Tata Consultancy Services; Edison, NJ
- Textron Inc.; Providence, RI
- The Aerospace Corporation, Civil Systems Group; El Segundo, CA
- The Boeing Company; Chicago, IL
- The Haskell Company; Jacksonville, FL
- The Lundquist Group LLC; New York, NY
- The Padina Group, Inc.; Lancaster, PA
- Therm, Incorporated; Ithaca, NY
- TransDigm Group, Inc.; Cleveland, OH
- Tribus Aerospace Corporation; Poway, CA
- TriMas Aerospace; Irvine, CA
- Triumph Group, Inc.; Berwyn, PA
- True Anomaly; Centennial, CO
- TTM Technologies Inc.; Santa Ana, CA
- Umbra Lab, Inc.; Santa Barbara, CA
- Unitech Composites Inc.; Hayden, ID
- United Launch Alliance; Centennial, CO
- Ursa Major Technologies, Inc.; Berthoud, CO
- Verify, Inc.; Costa Mesa, CA
- VIASAT, INC.; Carlsbad, CA
- Virgin Galactic, LLC; Las Cruces, NM
- Weldaloy Specialty Forgings; Warren, MI
- Westinghouse Electric Company LLC; Cranberry Township, PA
- Wisk Aero LLC; Mountain View, CA
- Woodward, Inc.; Fort Collins, CO
- World View Enterprises, Inc.; Tucson, AZ

The effective date of the Certificate is December 26, 2023, the date on which the application to amend was deemed submitted.

Dated: March 19, 2024.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2024–06142 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD814]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a Seminar Series presentation via webinar.

SUMMARY: The South Atlantic Fishery Management Council (Council) will host a presentation on Fish Acoustic Detection Algorithm Research to Identify Fish.

DATES: The webinar presentation will be held on Tuesday, April 9, 2024, from 1 p.m. until 2:30 p.m.

ADDRESSES: The presentation will be provided via webinar. The webinar is open to members of the public.

Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-seminar-series/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council will host a presentation on Fish Acoustic Detection Algorithm Research (FADAR) by staff from Florida Atlantic University Harbor Branch Oceanographic Institute. The presentation will present information on FADAR, a method to identify grouper and other fish potentially spawning or communicating. FADAR has been used to identify Nassau grouper in the South Atlantic region. A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: March 19, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024–06117 Filed 3–21–24; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD482]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice; issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Shell Offshore Inc. (Shell) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from July 1, 2024, through June 30, 2025.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.

Except with respect to certain activities not pertinent here, 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).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Shell plans to conduct a 4D towed seismic ocean bottom node (OBN) survey over Alaminos Canyon Lease Block 857 and the surrounding 42 lease blocks, with approximate water depths ranging from 1,500 to 3,000 meters (m). See Section F of the LOA application for a map of the area. Shell anticipates using one source vessel, towing an airgun array source consisting of 32 elements, with a total volume of 5,110 cubic inches (in^3). Please see Shell's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by

Shell in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

Summary descriptions of modeled survey geometries (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). In this case, Coil was selected as the best available proxy survey type in this case because of the spatial coverage of the planed survey is most similar to the Coil survey patter. The planned 4D OBN survey will involve a single source vessel sailing along closely spaced survey lines approximately 20 kilometers (km) in length and 100 m apart. The ''racetrack'' path taken by the vessel will mean that consecutive survey lines sailed will be approximately 400 m apart. With this relatively tight line spacing and at a survey speed of 4.5 knots (8.3 km per hour), the area covered by this single source vessel will be about 110 square kilometer (km^2) per week, or 15.7 km^2 per day. The coil survey pattern was assumed to cover approximately 144 km^2 per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Shell is not proposing to perform a survey using the coil geometry, its planned 4D OBN survey is expected to cover approximately 16 km^2 per day, meaning that the Coil proxy is most representative of the effort planned by Shell in terms of predicted Level B harassment exposures.

All available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, take numbers authorized through the LOA are considered conservative due to differences in the airgun array (32 elements, 5,110 in^3), as compared to the source modeled for the rule.

The survey will take place over approximately 70 days, including 50 days of sound source operation. The survey would occur within Zone 7 for 49 days and Zone 6 for 1 day. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, the rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5442, January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for one marine mammal species produces results inconsistent with what is known regarding its occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for the species as described below.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach results in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [3]). However, observational data collected by protected species observers (PSO) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounters during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water (≤700 m). This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species, such as killer whales in the GOM, through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021 and 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to seven animals).

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	n/a	51	n/a
Sperm whale	284	120	2,207	5.4
Kogia spp.	151	57	4,373	1.6
Beaked whales	2,382	241	3,768	6.4
Rough-toothed dolphin	443	127	4,853	2.6
Bottlenose dolphin	62	18	176,108	0
Clymene dolphin	1,190	341	11,895	2.9
Atlantic spotted dolphin	[5] 26	6	74,785	0
Pantropical spotted dolphin	11,312	3,246	102,361	3.2
Spinner dolphin	266	76	25,114	0.3
Striped dolphin	601	172	5,229	3.3
Fraser's dolphin	190	54	1,665	3.3
Risso's dolphin	194	57	3,764	1.5
Melon-headed whale	757	223	7,003	3.2
Pygmy killer whale	360	106	2,126	5.0
False killer whale	412	121	3,204	3.8
Killer whale	7	n/a	267	2.6

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Short-finned pilot whale	77	23	1,981	1.1

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.
[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).
[4] Includes 13 takes by Level A harassment and 138 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.
[5] Modeled take of 21 increased to account for potential encounter with group of average size Maze-Foley and Mullin, 2006)

Based on the analysis contained herein of Shell's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Shell authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: March 18, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–06066 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD821]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council including a joint session with the Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Management Board.

DATES: The meetings will be held Tuesday, April 9 through Thursday, April 11, 2024. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be an in-person meeting with a virtual option. Council members, other meeting participants, and members of the public will have the option to participate in person at The Sheraton Atlantic City Convention Center Hotel or virtually via Webex webinar. Webinar connection instructions and briefing materials will be available at: *https://www.mafmc.org/briefing/april-2024.*

Meeting address: Sheraton Atlantic City Convention Center Hotel, 2 Convention Blvd., Atlantic City, NJ 08401.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org,* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, April 9, 2024

Proposed Rule To Update Regulations Associated With the Magnuson-Stevens Fishery Conservation and Management Act's Confidentiality Requirements—NOAA Fisheries Staff

Presentation and opportunity for questions/feedback.

Offshore Wind Fisheries Compensation Programs

Summary of fishery information requirement for compensation eligibility.

Data needs and challenges.

Consider potential Council action.

2024 State of the Ecosystem Report—Dr. Sarah Gaichas, NEFSC

Review and provide feedback.

2024 Ecosystem Approach to Fisheries Management (EAFM) Risk Assessment Report

Review draft report and provide feedback for further development.

Habitat Activities Update—Greater Atlantic Regional Fisheries Office Habitat and Ecosystem Services Division

Presentation on activities of interest (aquaculture, wind, and other projects) in the region.

Wednesday, April 10, 2024

Joint MAFMC/NEFMC Framework To Reduce Atlantic Sturgeon Interactions in the Monkfish/Dogfish Gillnet Fisheries: Final Action

Review recommendations from the FMAT/PDT, Dogfish and Monkfish Advisory Panels, and joint Dogfish and Monkfish Committee.

Review alternatives and impacts analyses.

Select preferred alternatives and take final action.

NTAP Progress Report for Industry-Based Survey Pilot Program

Review and provide feedback.

LUNCH

Golden Tilefish Catch Share Program Review

Review public comments received.

Approve program review and submit to NOAA Fisheries.

Review recommendations from the Oversight Team and discuss next steps.

Golden Tilefish Assessment Overview—Pual Nitschke, NEFSC

Overview of recently completed Research Track Stock Assessment.

Impacts of Offshore Wind Energy Construction Sounds on Behavior of Longfin Squid and Black Sea Bass—Aran Mooney, Woods Hole Oceanographic Institution

Review research on impacts of sound and behavior of longfin squid and black sea bass.

Summer Flounder Commercial Mesh Exemptions Framework Meeting #1 (With ASMFC SFSBSB Board)

Review preliminary analysis and public input.

Approve draft range of alternatives for further analysis.

Thursday, April 11, 2024

Business Session

Committee Reports (SSC); Executive Director's Report; Organization Reports; and Liaison Reports.

Other Business and General Public Comment

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: March 19, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024–06116 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD648]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off New York, New Jersey, Delaware, and Maryland

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Atlantic Shores Offshore Wind, LLC (Atlantic Shores) to incidentally harass, by Level B harassment only, marine mammals during marine site characterization surveys in waters off of New York, New Jersey, Delaware, and Maryland, including in the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Areas OCS–A 0499, OCS–A 0541, OCS–A 0549, and associated export cable corridor (ECC) areas.

DATES: This authorization is effective from April 1, 2024, through March 31, 2025.

ADDRESSES: 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/action/incidental-take-authorization-atlantic-shores-offshore-wind-llcs-marine-site.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are 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.

Summary of Request

August 31, 2023, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to conducting marine site characterization surveys in waters off of New York, New Jersey, Delaware, and Maryland, specifically within BOEM Lease Areas OCS–A 0499, OCS–A 0541, OCS–A 0549, and associated ECC areas. Following NMFS' review of the application, Atlantic Shores submitted revised versions on October 11 and November 17, 2023. The application was deemed adequate and complete on November 20, 2023. Atlantic Shores' request is for take of small numbers of 14 species (15 stocks) of marine mammals by Level B harassment. Neither Atlantic Shores nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to Atlantic Shores for similar work (85 FR 21198, April 16, 2020; 86 FR 21289, April 22, 2021; 87 FR 24103, April 20, 2022; 87 FR 50293, August 10, 2022; 88 FR 38821, June 9, 2023; 88 FR 54575, August 10, 2023). Atlantic Shores complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and did not exceed authorized levels of take under previous IHAs issued for surveys offshore of New York and New Jersey. These previous monitoring results are available to the

public on our website: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization* and *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-bight-llc-marine-site.*

Description of Specified Activity

Overview

Atlantic Shores plans to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in waters off of New York, New Jersey, Delaware, and Maryland, specifically within BOEM Lease Areas OCS–A 0499, OCS–A 0541, OCS–A 0549, and associated ECC areas, collectively considered the Survey Area.

Atlantic Shores currently has two active IHAs associated with ongoing HRG survey activities: one in BOEM Lease Areas OCS–A 0499 and OCS–A 0549 effective June 9, 2023 through June 8, 2024 (88 FR 38821) and another in BOEM Lease Area OCS–A 0541 effective August 10, 2023 through August 9, 2024 (88 FR 54575). The purpose of the IHA authorized herein is to combine all ongoing HRG survey activities, including remaining survey activity associated with the two existing IHAs as well as new activity, under a single IHA. The new activity includes additional areas not covered under either currently active Atlantic Shores HRG survey IHAs. NMFS has made the required determinations and has issued the IHA. As such, NMFS has concurrently modified the effective dates of the two active IHAs to reflect an end date (March 31, 2024) that is 1 day earlier in time than the start date of the issued IHA (April 1, 2024).

The planned marine site characterization surveys are designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the 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 Survey Area. Up to two vessels may conduct survey efforts concurrently. Underwater sound resulting from Atlantic Shores' marine site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

The surveys are planned to begin no earlier than April 1, 2024 and are estimated to require a maximum of 300 survey days within a single year across a maximum of two vessels, which will include one vessel operating nearshore (less than 10 meters (m; 33 feet (ft)) depth) and one vessel operating offshore (greater than 10 m (33 ft) depth). The survey days may occur any month throughout the year as the exact timing of the surveys during the year is not yet certain. A ''survey day'' is defined as a 24-hour (hr) activity period in which an active acoustic sound source is used offshore and a 12-hr activity period when a vessel is operating nearshore. Surveyed at a speed of approximately 3.5 knots (kn; 6.5 kilometer (km) per hr (km/hr)), it is expected that the nearshore vessel will cover approximately 30 km (18.6 miles (mi)) of trackline per day, and the offshore vessel will cover approximately 140 km (87 mi) of trackline per day, based on Atlantic Shores' data acquisition efficiency expectations.

Specific Geographic Region

Atlantic Shores' survey activities will occur in the Northwest Atlantic Ocean within Federal and State waters off of New York, New Jersey, Delaware, and Maryland in BOEM Lease Areas OCS–A 0499, OCS–A 0541, OCS–A 0549, and along the associated ECC areas (figure 1). Overall, the Survey Area is approximately 20,251 square kilometers (km^2; 7,819 mi^2) and extends from the shoreline to approximately 74 km (46 mi) offshore and a maximum depth of approximately 60 m (197 ft).

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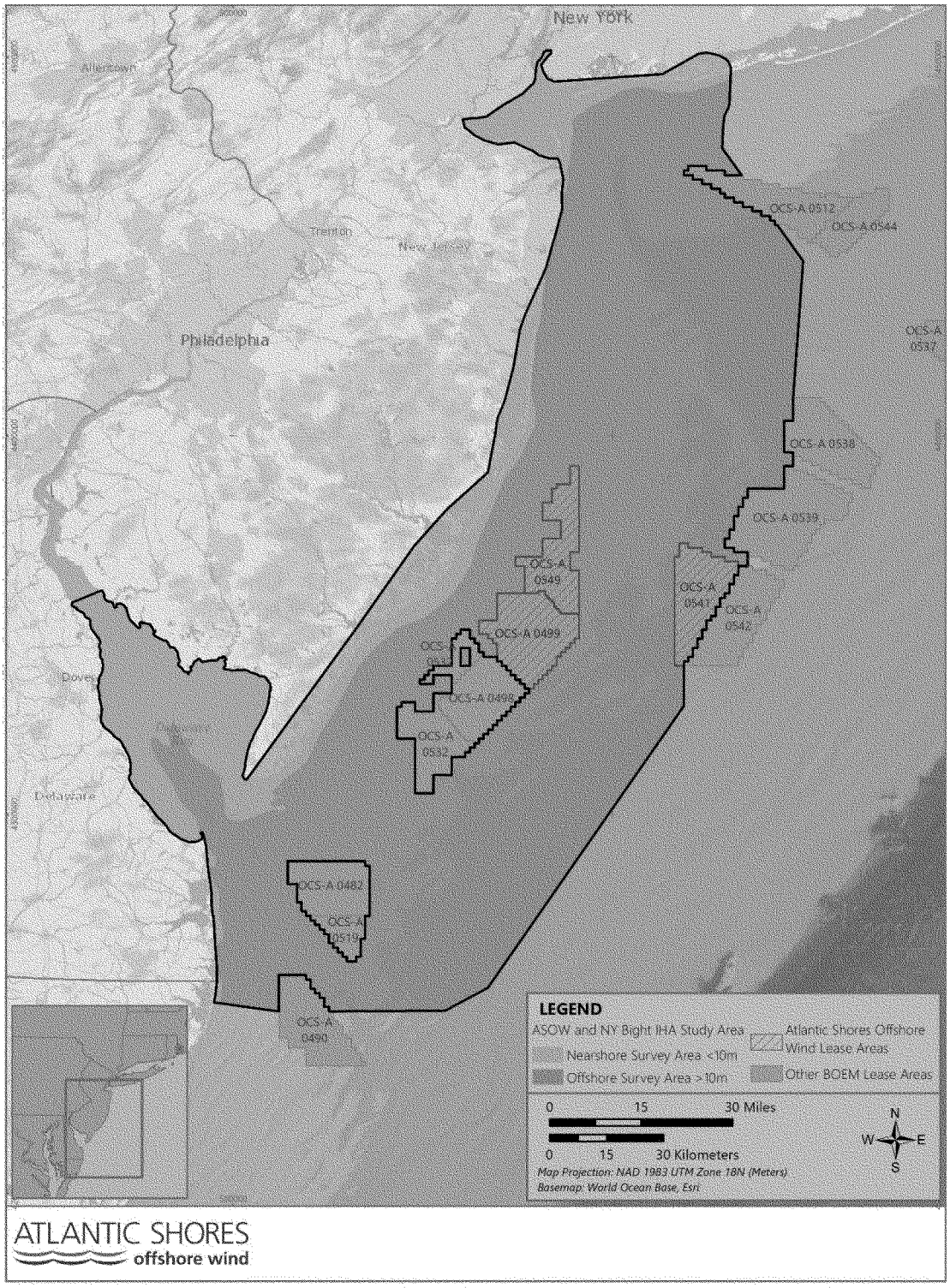

Figure 1 – Survey Area

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Detailed Description of the Specified Activity

Atlantic Shores' marine site characterization surveys within the Survey Area include geotechnical and geophysical surveys, including depth sounding to determine water depth, site bathymetry, and general seafloor topography using a single beam and multibeam echosounder (MBES); magnetic intensity measurements using a gradiometer; seafloor imaging using a side scan sonar; shallow penetration sub-bottom profilers (SBPs; parametric); and a medium penetration SBP (sparker). NMFS does not expect geotechnical survey activities or HRG survey activities using single and MBES, side-scan sonar, gradiometer, or parametric SBP to present a reasonably anticipated risk of causing incidental take of marine mammals, so these

activities are not discussed further in this notice.

The only acoustic source planned for use during Atlantic Shores' planned HRG survey activities with the potential to cause incidental take of marine mammals is a sparker. There is only one sparker system planned for use (GeoMarine Geo-Source 400), which will collect two-dimensional (2D) single-channel ultra-high resolution seismic (SUHRS) data while operating 400 tips at a power level of 400 Joules (J).

A detailed description of Atlantic Shores' planned HRG surveys is provided in the **Federal Register** notice for the proposed IHA (89 FR 753, January 5, 2024). Since that time, no changes have been made to the planned HRG survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the detailed description of the specified activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Atlantic Shores was published in the **Federal Register** on January 5, 2024 (89 FR 753). That notice described, in detail, Atlantic Shores' specified activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested interested persons submit relevant information, suggestions, and comments on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA. The proposed notice was available for a 30-day public comment period.

In total, NMFS received 363 comment submissions, comprising 356 individual comments from private citizens, six comment letters from organizations or public groups (Clean Ocean Action, Green Oceans, Defend Brigantine Beach Inc., Protect Our Coast New Jersey, the Warwick Group Consultants, LLC on behalf of the County of Cape May, New Jersey; the State of Delaware Department of Natural Resources and Environmental Control); and one from an elected official for the Borough of Seaside Park, New Jersey. Many of the comments received express concerns related to topics that are outside the scope of NMFS' authority under the MMPA (*e.g.,* offshore wind farm construction; impacts to the coastal ecosystem and local community that are unrelated to marine mammals and marine mammal habitat; concerns for other species outside of NMFS' jurisdiction (*i.e.,* birds, bats); costs associated with offshore wind development; turbine components; national security concerns; other MMPA incidental take authorizations; fishing and the commercial fishing industry; and project decommissioning). These comments are not described herein or discussed further. Moreover, where comments recommended that the final authorization include mitigation, monitoring, or reporting measures that were already included in the proposed authorization and such measures are carried forward in this final authorization, they are not included here as those comments did not raise significant points for NMFS to consider.

Most comments expressed general opposition to issuance of the IHA, takes of any marine mammals, or the underlying associated activities. We reiterate here that NMFS' action concerns only the authorization of marine mammal take incidental to the planned surveys—NMFS' authority under the MMPA does not extend to the specified activities themselves. We reiterate here that no mortality or injury of marine mammals is anticipated or authorized. We do not specifically address comments expressing general opposition to activities related to wind energy development or respond to comments that are out of scope of the proposed IHA (89 FR 753, January 5, 2024), such as comments on other Federal agency processes and activities not planned under this IHA.

All comments received during the public comment period which contained significant points were considered by NMFS and are described and responded to below. All comment letters are available on NMFS' website (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llcs-marine-site*) and are reflective of the comments received by private citizens.

Comment 1: Commenters stated there is no scientific evidence proving that the project and marine site characterization surveys more broadly would not indirectly lead to the mortality (death) or serious injury of marine mammals via significant behavioral changes due to noise associated with the project. A few commenters stated such significant behavioral changes may cause marine mammals to be displaced from the project area into shipping lanes or areas of higher vessel traffic, which could result in higher risks of vessel strike and that was not considered in NMFS' analysis.

Response: NMFS acknowledges that whales may temporarily avoid the area where the specified activities occur. However, NMFS does not anticipate that whales will be displaced in a manner that would result in a higher risk of vessel strike, and the commenters do not provide scientific evidence that either of these effects should be a reasonably anticipated outcome of the specified activity.

Regarding take by serious injury or mortality, NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals and determined that the surveys have the potential to impact marine mammals through behavioral effects. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Atlantic Shores will create conditions of acute or chronic acoustic exposure leading to long-term physiological or other lethal impacts to marine mammals. Based on the characteristics of the signals produced by the acoustic source planned for use (*i.e.,* sparker), Level A harassment is neither anticipated (even absent mitigation) nor authorized and NMFS' prescribed mitigation measures are expected to further reduce the duration and intensity of acoustic exposure while limiting the potential severity of any possible behavioral disruption. NMFS has determined Atlantic Shores' activities will not result in injury or mortality of any marine mammal species.

Further, NMFS has determined that any harassment from any specified activity is anticipated to, at most, result in some avoidance that would be limited spatially and temporally. It is unlikely that any impacts from the project would increase the risk of vessel strike from non-Atlantic Shores vessels. The commenter has presented no information supporting the speculation that whales would be displaced from the Survey Area into shipping lanes or areas of higher vessel traffic in a manner that would be expected to result in higher risks of vessel strike.

Comment 2: Commenters stated the terms ''take'' and ''harassment'' are misleading and inappropriate regulatory language without formal definition or adoption by the U.S. Congress. Several commenters assert that the request for an IHA should be denied because the potential taking of marine mammals is known and, therefore, not considered incidental.

Response: We refer the commenters to the definitions of ''take'' and ''harassment'' provided in the MMPA (16 U.S.C. 1362(13), (18)) and the definition of incidental taking in NMFS'

implementing regulations (50 CFR 216.103).

Comment 3: A commenter recommended that NMFS increase the size of all pre-start clearance, separation, and shutdown zones for all baleen whales to 500 m regardless of Endangered Species Act (ESA) status.

Response: NMFS disagrees with this recommendation. As described in the proposed notice and this final notice, the required 500-m shutdown zone for North Atlantic right whales (NARWs) and 100-m shutdown zone for other baleen whales (*e.g.,* fin, sei, minke, and humpback whales) exceeds the calculated distance to the largest harassment isopleth (56 m). These mitigation measures ensure the survey activities will have the least practicable adverse impact on baleen whales (*i.e.,* reduce the likelihood they will be harassed by this activity). For other ESA-listed species (*e.g.,* fin and sei whales), NMFS Greater Atlantic Regional Fisheries Office's (GARFO's) 2021 Offshore Wind Site Assessment Survey Programmatic ESA consultation (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic*) determined that a 100-m shutdown zone is sufficient to minimize exposure to noise that could be disturbing sufficiently to avoid the potential for take (as defined under the ESA). Accordingly, NMFS has adopted this shutdown zone size for all baleen whale species other than the NARW. Commenters did not provide scientific information for NMFS to consider to support their recommendation to expand the shutdown zone. Therefore, NMFS has determined that an increase in the size of the zones during HRG survey activities is not warranted.

Comment 4: To minimize the risk of vessel strikes for all whales and especially in recognition of the imperiled state of NARWs, commenters do not believe that mitigation measures to reduce the risk of vessel strike are strong enough and have instead suggested NMFS strengthen its existing vessel speed restrictions or require a mandatory 10-knot (kn) (5.14 m/s) speed restriction for all survey vessels at all times, except for reasons of safety, and in all places except in limited circumstances where the best available scientific information demonstrates that whales do not occur in the area.

Response: NMFS acknowledges that vessel strikes pose a risk to marine wildlife, including NARWs, but disagrees with the commenters that the mitigation measures to prevent vessel strike are insufficient. Under the MMPA, NMFS must prescribe regulations setting forth other means of effecting the least practicable adverse impact of the requestor's specified activities on species or stocks and its habitat. In both the proposed and final notices, we analyzed the potential for vessel strike resulting from the planned activities. We determined that the risk of vessel strike is low, based on the nature of the activities, including the number of vessels involved in those activities and the relative slow speed of those vessels (*e.g.,* roughly 3.5 kn (1.8 m/s)).

To effect the least practicable adverse impact from vessels, NMFS has required several mitigation measures specific to vessel strike avoidance. With the implementation of these measures, NMFS has determined that the potential for vessel strike is so low as to be discountable. Whales and other marine mammal species are present within the Project area year-round. As described in the proposed notice and included in this final notice, NMFS is requiring Atlantic Shores to reduce speeds to 10 kn (5.14 m/s) or less in circumstances when NARWs are known to be present or more likely to be in the area where vessels are transiting, which include, but are not limited to, all seasonal management areas (SMAs) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones (if established by NMFS). Vessels are also required to slow and maintain separation distances for all marine mammals.

While we acknowledge that a year-round 10-kn (5.14 m/s) requirement could potentially reduce the already discountable probability of a vessel strike, this theoretical reduction would not be expected to manifest in measurable real-world differences in impact. NMFS has determined that these and other included measures ensure the least practicable adverse impact on species or stocks and their habitat. Therefore, we are not requiring project-related vessels to travel 10 kn (5.14 m/s) or less at all times.

On August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations (87 FR 46921, August 1, 2022) to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing UME. Should a final vessel speed rule be issued and become effective during the effective period of this authorization (or any other MMPA incidental take authorization), the authorization holder will be required to comply with any and all applicable requirements contained within the final vessel speed rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders will be required to comply with the requirements of the vessel speed rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization will remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule will become effective immediately upon the effective date of any final vessel speed rule, and when notice is published on the effective date, NMFS will also notify Atlantic Shores if the measures in the vessel speed rule were to supersede any of the measures in the MMPA authorization.

Comment 5: Commenters expressed concern about cumulative impacts generally and how such impacts to the marine ecosystem would be measured.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on marine mammal populations. The preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density, distribution and status of the species, population size and growth rate, and other relevant stressors).

The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities (54 FR 40338, September 29, 1989). There, NMFS stated that such effects are not considered in making findings under MMPA section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants. Section 101(a)(5)(D) of the MMPA requires NMFS to make a

determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations 50 CFR 216.104(a)(1) require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Atlantic Shores was the applicant for the IHA, and we are responding to the specified activity as described in that application and making the necessary findings on that basis.

Through the response to public comments in the 1989 implementing regulations (54 FR 40338, September 29, 1989), NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations (*e.g.,* the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island). Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Atlantic Shores have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Atlantic Shores' IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued previous IHAs to Atlantic Shores (*e.g.,* 88 FR 38821, June 9, 2023; 88 FR 54575, August 10, 2023), which are similar to those planned by Atlantic Shores under this current IHA request. This Biological Opinion (BiOp) determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this BiOp remains valid.

Comment 6: Two commenters claimed sperm whales should have been included in the estimated take analysis of the proposed IHA because takes were anticipated and authorized in two currently active Atlantic Shores IHAs.

Response: NMFS acknowledges that Atlantic Shores has previously requested and NMFS has previously authorized the taking, by Level B harassment only, of small numbers of sperm whales incidental to marine site characterization surveys using other equipment types and configurations not planned for use here (*see* 88 FR 38821, June 9, 2023 and 88 FR 54575, August 10, 2023). However, in this case, Atlantic Shores did not request and NMFS, using the best scientific information available, did not estimate take of sperm whales from Atlantic Shores' proposed survey activities. Specifically, the GeoMarine Geo-Source 400 operating 400 tips at a power level of 400 J is the only equipment and configuration planned for use by Atlantic Shores for this project with the potential to cause incidental take of marine mammals, which results in an estimated Level B harassment zone of 56 m; the maximum depth of the survey area is 60 m and sperm whales are rarely found in waters less than 300 m, which is consistent with Roberts *et al.* (2023) sperm whale density values in the survey area (*see* Table 6–4 of Atlantic Shores' application). We emphasize that take of any marine mammal that is not authorized is prohibited under the MMPA as well as this IHA (*see* Condition 3(c)).

NMFS has noted in the Description of Marine Mammals in the Area of Specified Activities section that the spatial occurrence of species, including sperm whales, is such that take is not expected to occur and they are not discussed further.

Comment 7: Commenters asserted sound levels expected from the equipment planned for use are inaccurate, citing Rand Acoustics data that ''the frequency and sound power levels [Rand] measured did not match the equipment cited in the [Atlantic Shores] IHA. This finding prompted a comprehensive review of other expired and active IHAs [by the commenters] which revealed a regular pattern of NMFS accepting Level B harassment distances that are well under those expected given the peak (pk) and root-mean-square (RMS) source sound pressure levels (SPLpk and SPLrms) for the sonar devices in use, specifically sub-bottom profilers or 'sparkers.' . . . We see no reasonable path under NMFS' recommendations to rely on proxy devices.''

The Warwick Group and Defend Brigantine Beach also provided an example using another type of equipment as a proxy and asserted that, based on their own choice of source levels from Crocker and Fratantonio (2016), the output source levels and resulting calculated distances to the Level B harassment isopleth were accurate while the applicant's and NMFS' were underestimated and incorrect.

Response: NMFS refers the commenters to the Detailed Description of the Specified Activity section in the proposed IHA notice (89 FR 753, January 5, 2024), which provides operational information from Crocker and Fratantonio (2016) and the reasoning for selecting the SIG ELC 820 operating at 400 J with 100 electrode tips as a proxy for the GeoMarine Geo-Source operating at 400 J with 400 electrode tips. The use of this information and source levels appropriately addresses the equipment and configuration planned for use, which means that the analysis herein, including the selection of source level, is conservative for most typical applications of the acoustic source.

Comment 8: Defend Brigantine Beach suggested a 20 decibel (dB) propagation loss coefficient is only valid until the noise hits the bottom, suggesting that use of the spherical spreading model is inappropriate, inconsistent with the physical laws governing noise propagation in a shallow water environment and contradicted by existing NMFS and BOEM Guidance documents.

Response: A major component of transmission loss is spreading loss and from a point source in a uniform medium, sound spreads outward as spherical waves (''spherical spreading'') (Richardson *et al.,* 1995). In water, these conditions are often thought of as being related to deep water, where more homogenous conditions may be likely. However, the theoretical distinction between deep and shallow water is related more to the wavelength of the

sound relative to the water depth versus to water depth itself. Therefore, when the sound produced is in the kilohertz range, where wavelength is relatively short, much of the continental shelf may be considered ''deep'' for purposes of evaluating likely propagation conditions.

As described in the notice of proposed IHA, the area of water ensonified at or above the RMS 160 dB threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. Our use of the spherical spreading model (where propagation loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source) is a reasonable approximation over the relatively short ranges involved. Even in conditions where cylindrical spreading (where propagation loss = 10 * log [range]; such that there would be a 3-dB reduction in sound level for each doubling of distance from the source) may be appropriate (*e.g.,* non-homogenous conditions where sound may be trapped between the surface and bottom), this effect does not begin at the source. In any case, spreading is usually more or less spherical from the source out to some distance, and then may transition to cylindrical (Richardson *et al.,* 1995). For these types of surveys, NMFS has determined that spherical spreading is a reasonable assumption even in relatively shallow waters (in an absolute sense) as the reflected energy from the seafloor will be much weaker than the direct source and the volume influenced by the reflected acoustic energy would be much smaller over the relatively short ranges involved.

NMFS notes the commenter did not specify or provide the guidance documents they referred to when stating this approach contradicts NMFS and BOEM guidance and NMFS is unaware of guidance documents that support the Commenter's claim. Moreover, NMFS has relied on this approach for past IHAs with similar equipment, locations, and depths. NMFS' User Spreadsheet tool assumes a ''safe distance'' methodology for mobile sources where propagation loss is spherical spreading (20LogR) (*https://media.fisheries.noaa.gov/2020-12/User_Manual%20_DEC_2020_508.pdf?null*), and NMFS calculator tool for estimating isopleths to Level B harassment thresholds also incorporates the use of spherical spreading. NMFS has determined that spherical spreading is the most appropriate form of propagation loss for these surveys and represents the best scientific information available.

Comment 9: A commenter asserted the mitigation requirements have little impact on protecting marine mammals citing the ongoing Unusual Mortality Events (UMEs) as evidence, and many commenters asserted a correlation of offshore wind survey activities to currently active UMEs in the region. Several commenters expressed concern regarding the recent whale deaths, which they claim are the result of offshore wind activities and marine site characterization survey activities. Another commenter has suggested that NMFS should consider whether or not authorizing any level of harassment should be permissible given the recent elevated public concern about potential impacts on marine mammals from offshore wind activities. Many commenters stated that NMFS cannot determine the cause of the recent whale deaths accurately without doing necropsies and, therefore, NMFS cannot determine that recent whale mortalities were not related to offshore wind-related surveys.

Response: There is no evidence that noise resulting from offshore wind development-related site characterization surveys, which are conducted prior to construction, could potentially cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing surveys. The commenters offer no such evidence or other scientific information to substantiate their claim. NMFS will continue to gather data to help us determine the cause of death for these stranded whales.

The Marine Mammal Commission's recent statement supports NMFS' analysis: ''There continues to be no evidence to link these large whale strandings to offshore wind energy development, including no evidence to link them to sound emitted during wind development-related site characterization surveys, known as HRG surveys. Although HRG surveys have been occurring off New England and the mid-Atlantic coast, HRG devices have never been implicated or causatively associated with baleen whale strandings.'' (Marine Mammal Commission Newsletter, Spring 2023). There is an ongoing UME for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016. Partial or full necropsy examinations were conducted on approximately half of the whales. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (*e.g.,* national and state parks) with limited or no access. Of the whales examined (roughly 90 individuals), about 40 percent had evidence of human interaction, either ship strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass) or had other causes of death including parasite-caused organ damage and starvation. The best available science indicates that only Level B harassment, or disruption of behavioral patterns, may occur as a result of Atlantic Shores' HRG surveys. NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity, and commenters provide none. NMFS notes there has never been a report of any serious injuries or mortalities of a marine mammal associated with site characterization surveys.

Furthermore, while NMFS agrees in the value of necropsies in determining the cause of death of a stranded marine mammal, NMFS' stranding partners cannot perform necropsies on every dead animal as some of the carcasses were too decomposed, not brought to land, or stranded on protected lands (*e.g.,* national and state parks) with limited or no access. Furthermore, large whale necropsies are very complicated, requiring many people and typically heavy equipment (*e.g.,* front loaders, *etc.*). Some whales are found dead floating offshore and need to be towed to land for an examination. There can be limitations for access and using heavy equipment depending on the location where the whale stranded, including protected lands (parks or concerns for other endangered species) and accessibility (remote areas, tides that prevent access at times of day). Also, necropsies are the most informative when the animal died relatively recently. Some whales are not found until they are already decomposed, which limits the amount of information that can be obtained. For more information on offshore wind and whales, we reference the commenter to our website (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/frequent-questions-offshore-wind-and-whales*).

Comment 10: The Warwick Group, on behalf of the County of Cape May, New Jersey, asserted a sparker should be considered a continuous noise source,

thus the NMFS acoustic threshold of 120 dB (referenced to 1 microPascal (re 1 µPa) for Level B harassment should be used.

Response: As is consistent with the best available science, including, but not limited to, Crocker and Fratantonio (2016), sparkers constitute an impulsive source and, therefore, the SPL threshold of 160 dB re 1 µPa is applicable for assessing potential acoustic impacts from Atlantic Shores' marine site characterization surveys.

Comment 11: Several commenters stated that more time and research is needed to understand what the impacts of offshore wind may be on the ocean and marine life, including a suggestion that all offshore wind-related work should be halted until a pilot project is conducted.

Response: NMFS is required to authorize the requested incidental take if it finds the total incidental take of small numbers of marine mammals by U.S. citizens while engaging in a specified activity within a specified geographic region during a 1-year period will have a negligible impact on such species or stock and where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses (16 U.S.C. 1371(a)(5)(A)). While the incidental take authorization must be based on the best scientific information available, the MMPA does not allow NMFS to delay issuance of the requested authorization on the presumption that new information will become available in the future. NMFS has made the required findings, based on the best scientific information available, and has included mitigation measures to effect the least practicable adverse impacts on marine mammals.

Comment 12: Commenters suggested denial of the IHA because ''a full re-evaluation of the humpback whales Potential Biological Removal (PBR) level for 2024'' is needed in light of the increased number of deaths between December 2022 and December 2023.

Response: NMFS reiterates that no mortality or injury is authorized for any species in this IHA and thus, PBR is not part of the negligible impact determination. For additional information on the SAR process, please see *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

Comment 13: Clean Ocean Action noted that, because survey vessel type and number of trips are not provided within the proposed notice, it is insufficient for NMFS to claim that the probability of vessel strikes from project-associated survey vessels is low enough to be discountable when the vessels are not towing gear because the vessel trip information is not provided.

Response: NMFS disagrees with the commenter that the risk of vessel strike was not considered in the analysis or the lack of information on vessel type and number of vessel trips leads to an inability to appropriately assess the potential risks related to vessel strike. NMFS takes the risk of vessel strike seriously and while we acknowledge that vessel strikes can result in injury or mortality, we have analyzed and determined that the potential for vessel strike is so low as to be discountable. Moreover, to effect the least practicable adverse impact, Atlantic Shores must abide by a suite of vessel strike avoidance measures that include, for example, vessel speed restrictions to 10 kn (5.14 m/s) or less in SMAs and DMAs or when mother/calf pairs, pods, or large assemblages of marine mammals are observed; required use of dedicated observers on all survey vessels; maintaining awareness of NARW presence through monitoring of NARW sighting systems (*see* Condition 5(m)). Further, any observations of a NARW by project-related personnel would be reported to sighting networks, alerting other mariners to NARW presence. Both Atlantic Shores and other mariners are required to abide by all existing approach and speed regulations designed to minimize the risk of vessel strike.

Comment 14: Defend Brigantine Beach questioned the model and measurements that lead to the conclusion ''that there is now a very low-density number'' of NARW from the Duke University study (Roberts *et al.,* 2023), asserting it contradicts density data used previously by Atlantic Shores in their application for construction as well as 10 years of observational data.

Response: NMFS disagrees that Roberts *et al.* (2023) is not the best scientific information available on NARW density. The commenter provided a New York State Department of Environmental Conservation ''Species Status Assessment,'' along with links to the WhaleMap (*https://whalemap.org*) to support the claim that the Roberts *et al.* (2023) density estimates are not representative of NARW density in the Survey Area.

The Species Status Assessment referenced by the commenter was last revised June 26, 2013, and although it provides information regarding NARW, including multiple references to NOAA-generated data and reports, it does not include density information and is therefore not appropriate for comparison to Roberts *et al.* (2023). Similarly, WhaleMap was designed to communicate the latest whale survey results but does not include density information.

Regarding data used in previous applications for ITAs by Atlantic Shores, the take numbers, as shown in the proposed and final notice, are based on the best available marine mammal density data, published and peer reviewed scientific literature, on-the-water reports from other nearby projects or past MMPA actions, and, in the case of the proposed rule for Atlantic Shores construction activities (*see* 88 FR 65430, September 2, 2023), highly complex statistical models of which real-world assumptions and inputs have been incorporated to estimate take on a project-by-project basis. Both actions calculate density estimates based on density data from Roberts *et al.* (2023) but, because planned activities and specific geographic areas differ between projects, it would not be appropriate to compare those calculated density estimates between projects.

Comment 15: Green Oceans claims that the proposed IHA does not properly value biodiversity in its assessment of harm and that ''impacts to the abundance or distribution of marine mammals can disrupt vital systems that regulate the ocean and the climate.''

Response: Green Oceans provides no further development of this comment, *e.g.,* in what way it believes that the MMPA requires that ''biodiversity'' be accounted for in the analyses required under the MMPA, how it believes that these surveys would be likely to impact the abundance or distribution of marine mammals, or how such impacts might be likely to disrupt unspecified ''vital systems.'' However, we reiterate that the magnitude of behavioral harassment authorized is very low and the severity of any behavioral responses are expected to be primarily limited to temporary displacement and avoidance of the area when some activities that have the potential to result in harassment are occurring (*see* Negligible Impact Analysis and Determination section for our full analysis). NMFS does not anticipate that marine mammals would be permanently displaced or displaced for extended periods of time from the area where the planned activities will occur, and the commenter does not provide evidence that this effect should be a reasonably anticipated outcome of the specified activity. We expect temporary avoidance to occur, at worst, but that is distinctly different from displacement, which suggests longer-term, reduced usage of habitat. Similarly, NMFS is not aware of any scientific information

suggesting that the survey activity would cause meaningful shifts in abundance and distribution of marine mammals and disagrees that this would be a reasonably anticipated effect of the specified activities. The authorized take of NARWs by Level B harassment is precautionary but considered unlikely as NMFS' take estimation analysis does not account for the use of mitigation and monitoring measures (*e.g.,* the requirement for Atlantic Shores to implement a shutdown zone for NARWs (500 m) that is more than eight times as large as the estimated harassment zone (56 m)). These requirements are expected to largely eliminate the actual occurrence of Level B harassment events and to the extent that harassment does occur, would minimize the duration and severity of any such events. Level B harassment authorized by this IHA is not expected to negatively impact abundance or distribution of other marine mammal species particularly given that it does not account for the suite of mitigation and monitoring measures NMFS has prescribed, and would be comprised of temporary low severity impacts, with no lasting biological consequences. Therefore, even if marine mammals are in the area of the specified activities, a displacement impact is not anticipated.

Comment 16: Several commenters stated that the ''precautionary principle'' does not allow NMFS to authorize the ''introduction of stressors'' to populations undergoing an UME, that authorization of take for such species ''violates the spirit and intent of the MMPA,'' and that NMFS is ''precluded from authorizing wind energy development'' in habitat utilized by relevant species for which there are active UMEs (*i.e.,* humpback, minke, and NARW).

Response: The commenters refer to supposed standards that do not exist in the MMPA, *e.g.,* the MMPA contains no reference to the ''precautionary principle,'' and fails to adequately explain its supposition that NMFS has violated the ''spirit and intent'' of the MMPA. As described previously, an IHA does not authorize or allow the activity itself but authorizes the take of marine mammals incidental to the ''specified activity'' for which incidental take coverage is being sought. In this case, NMFS is responding to Atlantic Shores' request to incidentally take marine mammals while engaged in marine site characterization surveys and determining whether the necessary findings can be made based on Atlantic Shores' application. The authorization of Atlantic Shores' survey activities, or any other activities that introduce stressors, is not within NMFS' jurisdiction.

Regarding UMEs, the MMPA does not preclude authorization of take for species or stocks with ongoing UMEs. Rather, NMFS considers the ongoing UME as part of the environmental baseline for the affected species or stock as part of its negligible impact analyses. Elevated NARW 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 NARWs. As noted previously, the survey area overlaps a migratory corridor for NARWs. Due to the fact that the 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 Biologically Important Area (BIA), NARW migration is not expected to be impacted by the 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 Atlantic Shores' planned activities. Additionally, only very limited take by Level B harassment of NARWs has been requested and is authorized by NMFS as HRG survey operations are required to maintain a 500 m distance and shutdown if a NARW is sighted at or within that distance. The 500 m shutdown zone for NARWs is conservative, considering the Level B harassment isopleth is estimated to be 56 m, and thereby minimizes the potential for behavioral harassment of this species. NMFS does not anticipate NARW takes that would result from Atlantic Shores' activities will impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

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 minke whale UME is currently non-active, with closure pending.

The required mitigation measures are expected to reduce the number and/or severity of takes for all species 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. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized.

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.

Comment 17: Green Oceans criticized NMFS's use of the 160-dB RMS Level B harassment threshold, stating that the threshold is based on outdated information and that the best available science shows that behavioral impacts can occur at levels below the threshold. Criticism of our use of this threshold also focused on its nature as a step function, *i.e.,* it assumes animals don't respond to received noise levels below the threshold but always do respond at higher received levels. Green Oceans also suggested that reliance on this threshold results in consistent underestimation of impacts because it is ''not sufficiently conservative'' and that any determination that relies on this threshold is ''arbitrary and capricious.'' Green Oceans stated that NMFS generalized behavioral take thresholds are insufficient and should be revised because they do ''not properly consider the nonlinear effects of interactions

between multiple stressors on marine mammals.''

Response: NMFS acknowledges that the 160-dB RMS step-function approach is simplistic and that an approach reflecting a more complex probabilistic function may more effectively represent the known variation in responses at different levels due to differences in the receivers, the context of the exposure, and other factors. Green Oceans suggested that our use of the 160-dB threshold implies that we do not recognize the science indicating that animals may react in ways constituting behavioral harassment when exposed to lower received levels. However, we do recognize the potential for Level B harassment at exposures to received levels below 160 dB RMS, in addition to the potential that animals exposed to received levels above 160 dB RMS will not respond in ways constituting behavioral harassment. These comments appear to evidence a misconception regarding the concept of the 160-dB threshold. While it is correct that in practice it works as a step-function, *i.e.,* animals exposed to received levels above the threshold are considered to be ''taken'' and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simple quantitative estimate of take while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

NMFS also notes Green Oceans' statement that the 160-dB threshold is ''not sufficiently conservative.'' Green Oceans does not further describe the standard of conservatism that it believes NMFS must attain or how that standard relates to the legal requirements of the MMPA. Green Oceans goes on to imply that use of the 160-dB threshold is inappropriate because it addresses only exposures that cause disturbance, versus those exposures that present the potential to disturb through disruption of behavioral patterns. Green Oceans does not further develop this comment or offer any justification for this contention. NMFS affirms that use of the 160-dB criterion is expected to be inclusive of acoustic exposures presenting the potential to disturb through disruption of behavioral patterns, as required through the MMPA's definition.

Green Oceans cited reports of changes in vocalization, typically for baleen whales, as evidence in support of a lower threshold than the 160-dB threshold currently in use. A mere reaction to noise exposure does not, however, mean that a take by Level B harassment, as defined by the MMPA, has occurred. For a take to occur requires that an act have ''the potential to disturb by causing disruption of behavioral patterns,'' not simply result in a detectable change in motion or vocalization. Even a moderate cessation or modification of vocalization might not appropriately be considered as being of sufficient severity to result in take (Ellison *et al.,* 2012). Green Oceans claims these reactions result in biological consequences indicating that the reaction was indeed a take but does not provide a well-supported link between the reported reactions at lower received levels and the claimed consequences.

Overall, there is a lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.,* feeding, resting, or migrating), prior experience, and biological factors (*e.g.,* age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.,* 2007, 2019; Ellison *et al.,* 2012; Bain and Williams, 2006; Gomez *et al.,* 2016).

Green Ocean referenced linear risk functions developed for use specifically in evaluating the potential impacts of Navy tactical sonar. However, Green Oceans provided no suggestion regarding a risk function that it believes would be appropriate for use in this case. There is currently no agreement on these complex issues, and this threshold has remained in use in part because of the practical need to use a relatively simple threshold based on available information that is both predictable and measurable for most activities.

Comment 18: Delaware DNREC recommends: (1) requiring Atlantic Shores follow the proposed speed limitation for smaller vessels outlined in 50 CFR 224 ''Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule'' (87 FR 46921, August 1, 2022) if the rule has not been finalized by the time the IHA becomes effective; (2) removing the waiver for shutdown requirements for small delphinids and pinnipeds if the PSO identifies any individuals in distress.

Response: NMFS appreciates the recommendations from DNREC and reiterates that, should a final vessel speed rule be issued and become effective during the effective period of these regulations (or any other MMPA incidental take authorization), Atlantic Shores will be required to comply with any and all applicable requirements contained within the final vessel speed rule.

Regarding removal of the waiver for shutdown requirement for certain delphinids and pinnipeds should PSOs identify an individual in distress, NMFS directs the commenter to measures in the Monitoring and Reporting section of the proposed notice and final authorization for the reporting of injured or dead marine mammals. PSOs are required to record all sightings of marine mammals and provide details of any observed behavioral disturbances. Based on reporting, NMFS may modify the IHA if the prescribed measures are likely not affecting the least practicable adverse impact on the affected marine mammals. There have also been no such observations reported in any reports from similar survey activities.

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, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 1 lists all species or stocks for which take is likely and authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and 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 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. Atlantic SARs. All values presented in table 1 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—MARINE MAMMAL SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
Family Balaenidae:						
N Atlantic Right Whale [5]	*Eubalaena glacialis*	Western Atlantic	E, D, Y	338 (0, 332, 2020)	0.7	31.2
Family Balaenopteridae (rorquals):						
Fin Whale	*Balaenoptera physalus*	Western N Atlantic	E, D, Y	6,802 (0.24, 5,573, 2016)	11	1.8
Humpback Whale	*Megaptera novaeangliae*	Gulf of Maine	-, -, N	1,396 (0, 1380, 2016)	22	12.15
Minke Whale	*Balaenoptera acutorostrata*	Canadian Eastern Coastal	-, -, N	21,968 (0.31, 17,002, 2016).	170	10.6
Sei Whale	*Balaenoptera borealis*	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2016)	6.2	0.8
Family Delphinidae:						
Long-Finned Pilot Whale	*Globicephala melas*	Western N Atlantic	-, -, N	39,215 (0.30, 30,627, 2016).	306	9
Atlantic Spotted Dolphin	*Stenella frontalis*	Western N Atlantic	-, -, N	39,921 (0.27, 32,032, 2016).	320	0
Atlantic White-Sided Dolphin.	*Lagenorhynchus acutus*	Western N Atlantic	-, -, N	93,233 (0.71, 54,443, 2016).	544	27
Bottlenose Dolphin	*Tursiops truncatus*	Northern Migratory Coastal	-, -, Y	6,639 (0.41, 4,759, 2016)	48	12.2-21.5
Bottlenose Dolphin	*Tursiops truncatus*	Western N Atlantic Offshore	-, -, N	62,851 (0.23, 51,914, 2016).	519	28
Risso's Dolphin	*Grampus griseus*	Western N Atlantic	-, -, N	35,215 (0.19, 30,051, 2016).	301	34
Common Dolphin	*Delphinus delphis*	Western N Atlantic	-, -, N	172,974 (0.21, 145,216, 2016).	1,452	390
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31, 74,034, 2016).	851	164
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Gray Seal [6]	*Halichoerus grypus*	Western N Atlantic	-, -, N	27,300 (0.22, 22,785, 2016).	1,458	4,453
Harbor Seal	*Phoca vitulina*	Western N Atlantic	-, -, N	61,336 (0.08, 57,637, 2018).	1,729	339

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal SARs online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual mortality and serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range.

[5] Linden (2023) estimated the population size in 2022 as 356 individuals, with a 95 percent credible interval ranging from 346 to 363, and the draft 2023 SAR provides an estimated stock abundance of 340 (Hayes *et al.,* 2024). NMFS acknowledges these recent estimations in addition to the 2022 SAR stock abundance estimate.

[6] NMFS's stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. The annual M/SI given is for the total stock.

As indicated above, all 14 species (15 stocks) in table 1 temporally and spatially co-occur with the proposed activity to the degree that take is reasonably likely to occur. While other species (*e.g.,* sperm whales) have been documented in the area (*see* table 3–1 and 6–4 of the IHA application), the temporal and/or spatial occurrence of these species is such that take is not expected to occur and they are not discussed further beyond the explanation provided here.

A detailed description of the species likely to be affected by this project, including brief introductions to the species and relevant stocks, population trends and threats, and local occurrence, were provided in the **Federal Register** notice for the proposed IHA (89 FR 753,

January 5, 2024). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to the **Federal Register** notice (89 FR 753, January 5, 2024) for these descriptions. Please also refer to the NMFS website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

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.,* 2005, Wartzok and Ketten, 1999, Au and Hastings, 2008). To reflect this, Southall *et al.* (2007), Southall *et al.* (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 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *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 *et al.,* 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

A description of the potential effects of the specified activities on marine mammals and their habitat can be found in the **Federal Register** notice for the proposed IHA (89 FR 753, January 5, 2024). There is no new information on the potential effects of the specified activities on marine mammals. Therefore, that information is not repeated here; please refer to the **Federal Register** notice (89 FR 753, January 5, 2024).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through the IHA, which informs 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 are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound produced by the sparker. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below, we describe how the 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 authorized 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 permanent threshold shift (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, Southall *et al.,* 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 RMS SPL of 120 dB 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.

Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Atlantic Shores' marine site characterization surveys include the use of an impulsive (*i.e.,* sparker) source, and therefore the 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).

The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

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 (when relevant) 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. Atlantic Shores used 180° beamwidth in the calculation for the sparker system as is appropriate for an omnidirectional source.

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 where the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that, in instances where data from a suitable proxy is presented, Crocker and Fratantonio (2016) be used, or, alternatively, when no suitable proxy is available, source levels provided by the manufacturer may be used instead. Table 2 in the **Federal Register** notice for the proposed IHA (89 FR 753, January 5, 2024) shows the sparker type used during the planned surveys and the source levels associated with the sparker.

Atlantic Shores plans to use the GeoMarine Geo-Source 400 Marine Multi-tip Sparker System (400 tip/400 J). No data are provided by Crocker and Fratantonio (2016) for the GeoMarine Geo-Source sparker system, therefore, Atlantic Shores has used the data provided for the SIG ELC 820 operating at 400 J with 100 electrode tips as a proxy for the GeoMarine Geo-Source operating at 400 J with 400 electrode tips. Crocker and Fratantonio (2016) indicates an operational source level of 195 dB_{RMS} for the SIG ELC 820 while operating at a power of 400 J using 100 electrode tips, and Atlantic Shores has determined that an increase in the number of electrode tips decreases the overall peak source pressure translating to a lower operational source level. NMFS concurs with this selection, which is described in table 2 of the **Federal Register** notice for the proposed IHA (89 FR 753, January 5, 2024). Using the proxy source level of 195 dB RMS SPL results in an estimated distance of 56 m to the Level B harassment isopleth. More detail is provided on the acoustic sources and methodology in the **Federal Register** notice for the proposed IHA; please refer to the **Federal Register** notice (89 FR 753, January 5, 2024).

Marine Mammal Occurrence

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2023) represent the best available information regarding marine mammal densities in the Survey Area. These density data incorporate aerial and shipboard line-transect survey data from NMFS and other organizations and incorporate data from numerous physiographic and 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 in 2016 and models for all taxa were updated in 2022 (Roberts *et al.,* 2023). 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.

For the exposure analysis, density data from Roberts *et al.* (2023) were mapped using a geographic information system (GIS). For the Survey Area, the monthly densities of each species as reported by Roberts *et al.* (2023) were averaged by season; thus, a density was calculated for each species for spring, summer, fall, and winter. Density seasonal averages were calculated for both the nearshore and offshore areas (*i.e.,* inside and outside the 10-m isobath) for each species to assess the greatest average seasonal densities for each species. To be conservative since the exact timing for the survey during the year is uncertain, the greatest average seasonal density calculated for each species was carried forward in the exposure analysis, with exceptions

noted later in this discussion. Estimated greatest average seasonal densities (animals/km^2) of marine mammal species that may be taken incidental to the planned survey can be found in tables C–1 and C–2 of Atlantic Shores' IHA application. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2023) models provide results at the genus or guild level.

There are two stocks of bottlenose dolphins that may be impacted by the surveys (Western North Atlantic Northern Migratory Coastal Stock (coastal stock) and Western North Atlantic Offshore Stock (offshore stock)), however, Roberts *et al.* (2023) do not differentiate by stock. These two stocks are considered geographically separated and multiple isobaths, including the 20-m (Hayes *et al.* 2021) and 25-m (Hayes *et al.* 2020), have been considered as the delineation between the two. Atlantic Shores used the 25-m isobath in their calculation and NMFS has accepted this interpretation. The nearshore area of the Survey Area is considered waters less than 10 m depth and only the coastal stock will occur and potentially be taken by survey effort in that area. Both stocks could occur in the offshore area (greater than 10 m depth), so Atlantic Shores calculated separate mean seasonal densities to use for estimating take of the coastal and offshore stocks of bottlenose dolphins, respectively.

In addition, the Roberts *et al.* (2023) 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 from Roberts *et al.* (2023) include all seal species that may occur in the Western North Atlantic combined (*i.e.,* gray, harbor, harp, hooded). For this IHA, only gray seals and harbor seals are reasonably expected to occur in the Survey Area; densities of seals were split evenly between these two species.

Finally, the Roberts *et al.* (2023) density model does not differentiate between pilot whale species. While the exact latitudinal ranges of the two species are uncertain, only long-finned pilot whales are expected to occur in this project area due to their more northerly distribution and tolerance of shallower, colder shelf waters (Hayes *et al.,* 2022). Short-finned pilot whales are not anticipated to occur as far north as the Survey Area so we assume that all pilot whales near the project area will be long-finned pilot whales (Garrison and Rosel, 2017). For this IHA, densities of pilot whales are assumed to be only long-finned pilot whale.

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 authorized.

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 were calculated, as described above. The distance (*i.e.,* 56 m distance associated with the sparker system) to the Level B harassment criterion and the total length of the survey trackline were then used to calculate the total ensonified area, or harassment zone, around the survey vessel. Atlantic Shores plans to conduct HRG surveys for a maximum total of 28,800 km trackline length, of which 25,200 km are in the offshore area and 3,600 km are in the nearshore area. Based on the maximum estimated distance to the Level B harassment threshold (56 m) for the sparker system and maximum total survey length, the total ensonified area is 3,228 km^2 (2,824 km^2 offshore area and 404 km^2 nearshore area), based on the following formula, where the total estimated trackline length (*Distance/day*) in each area was used and buffered with the horizontal distance to the Level B harassment threshold (*r*) to determine the total area ensonified to 160 dB SPL.

$$\textit{Harassment Zone} = (\textit{Distance/day} \times 2r) \pi r^2$$

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/km^2), incorporating the greatest 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 (up to 300 days). A summary of this method is illustrated in the following formula, where the *Harassment Zone* is multiplied by the highest seasonal mean density (*D*) of each species or stock (animals/km^2; except for pilot whales where annual density was used based on data availability).

$$\textit{Estimated Take} = \textit{Harassment Zone} \times D \times \textit{number of days}$$

The resulting take of marine mammals (Level B harassment) is shown in table 3.

TABLE 3—ESTIMATED TAKE NUMBERS AND TOTAL TAKE AUTHORIZED

Species	Nearshore survey area maximum seasonal density (No./100 km^2) [a]	Nearshore survey area calculated take	Offshore survey area maximum seasonal density (No./100 km^2) [a]	Offshore survey area calculated take	Total adjusted estimated take requested (No.)	Estimated takes as a percentage of population
N Atlantic right whale	0.058	0	0.075	2	2	<1
Fin whale	0.004	0	0.135	4	4	<1
Humpback whale	0.058	0	0.105	3	3	<1
Minke whale	0.04	0	0.585	17	17	<1
Sei whale	0.004	0	0.046	1	[d] 2	<1
Long-finned pilot whale [b]	0	0	0.071	2	[d] 9	<1
Atlantic spotted dolphin	0.002	0	0.657	19	[d] 25	<1
Atlantic white-sided dolphin	0.009	0	0.731	21	21	<1
Bottlenose dolphin Northern migratory coastal stock	64.596	261	17.155	[e] 194	455	6.9
Bottlenose dolphin offshore stock	NA	NA	17.155	[e] 291	291	<1
Risso's dolphin	0	0	0.078	2	[d] 8	<1
Common dolphin	0.128	0.5	6.517	184	185	<1
Harbor porpoise	0.393	2	3.374	95	97	<1
Gray seal [c]	10.022	41	5.886	166	207	<1
Harbor seal [c]	10.022	41	5.886	166	207	<1

Note: The nearshore survey area is delineated as waters less than 10 m depth while the offshore survey area is delineated as waters greater than 10 m depth.
[a] Cetacean density values from Duke University (Roberts *et al.,* 2023).

[b] Pilot whale density models from Duke University (Roberts *et al.,* 2023) 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.,* (2023) in the Survey Area only reflect the presence of long-finned pilot whales.
[c] Pinniped density models from Duke University (Roberts *et al.,* 2023) represent 'seals' as a guild rather than by species. These each represent 50 percent of a generic seal density value.
[d] The number of authorized takes (Level B harassment only) for these species has been increased from the calculated take to consider the mean group size. Source for Atlantic spotted dolphin, long-finned pilot whale, Risso's dolphin, and sei whale group size estimates is Annual Report of a Comprehensive Assessment of Marine Mammal, Marine Turtle, and Seabird Abundance and Spatial Distribution in U.S. waters of the Western North Atlantic Ocean, Atlantic Marine Assessment Program for Protected Species (AMAPPS; NEFSC and SEFSC, 2022).
[e] Density and take numbers were proportioned per stock as a function of depth. More information provided in section 6.3 of the IHA application.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, 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.

Pursuant to section 7 of the ESA, Atlantic Shores is also required to adhere to relevant Project Design Criteria (PDC) of the NMFS' 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*).

Visual Monitoring and Shutdown Zones

Atlantic Shores must employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) 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 mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate 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.

During survey operations (*e.g.,* any day in which use of the sparker system is planned to occur, and whenever the sparker system is in the water, whether activated or not), a minimum of one visual marine mammal observer (PSO) must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes (min) prior to sunrise through 30 min following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours. Visual monitoring must begin no less than 30 min prior to ramp-up (described below) and must continue until 30 min after use of the sparker system ceases.

Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor applicable pre-start clearance and shutdown zones (see below). These zones shall be based upon the radial distance from the sparker system (rather than being based around the vessel itself).

Two pre-start clearance and shutdown zones are defined, depending on the species and context. Here, an extended pre-start clearance and shutdown zone encompassing the area at and below the sea surface out to a radius of 500 m from the sparker system (0–500 m) is defined for NARW. For all other marine mammals, the pre-start clearance and shutdown zone encompasses a standard distance of 100 m (0–100 m) during the use of the sparker. Any observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hr between watches and may conduct a maximum of 12 hr of observation per 24-hr period.

Pre-Start Clearance and Ramp-Up Procedures

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the sparker system when technically feasible. If technically feasible, operators must ramp up sparker to half power for 5 min and then proceed to full power. A 30 min pre-start clearance observation period of the pre-start clearance zones must occur prior to the start of ramp-up. The intent of the pre-start clearance observation period (30 min) is to ensure no marine mammals are within the pre-start clearance zones prior to the beginning of ramp-up. The intent of the ramp-up is to warn marine mammals of pending operations and to allow sufficient time for those animals to leave the immediate vicinity. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 min prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zones for 30 min prior to the initiation of ramp-up (pre-start clearance). During this 30 min pre-start clearance period the entire pre-start clearance zone must be visible, except as indicated below.
- Ramp-ups shall be scheduled so as to minimize the time spent with the sparker activated.
- A visual PSO conducting pre-start clearance observations must be notified

again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.

- 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 zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that mitigation commands are conveyed swiftly while allowing PSOs to maintain watch.

If there is uncertainty regarding identification of a marine mammal species, PSOs may use best professional judgment in making the decision to call for a shutdown.

- Ramp-up may not be initiated if any marine mammal to which the pre-start clearance requirement applies is within the pre-start clearance zone. If a marine mammal is observed within the pre-start clearance zone during the 30 min pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings.
- PSOs must monitor the pre-start clearance zones 30 min before and during ramp-up, and ramp-up must cease and the sparker must be shut down upon observation of a marine mammal within the applicable pre-start clearance zone.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 min prior to beginning ramp-up. Sparker activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

If the sparker is shut down for brief periods (*i.e.,* less than 30 min) 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 pre-start clearance zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Shutdown Procedures

All operators must adhere to the following shutdown requirements:

- Any PSO on duty has the authority to call for shutdown of the sparker system if a marine mammal is detected within the applicable shutdown zones.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.
- When the sparker system is active and a marine mammal appears within or enters the applicable shutdown zones, the sparker must be shut down. When shutdown is instructed by a PSO, the sparker system must be immediately deactivated and any dispute resolved only following deactivation.
- Two shutdown zones are defined, depending on the species and context. An extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 m from the sparker system (0–500 m) is defined for NARW. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 m (0–100 m) during the use of the sparker.

The shutdown requirement is waived for small delphinids and pinnipeds. If a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped is visually detected within the shutdown zones, no shutdown is required unless the PSO confirms the individual to be of a genus other than those listed, in which case a shutdown is required.

If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger shutdown zone), PSOs may use best professional judgment in making the decision to call for a shutdown.

Upon implementation of shutdown, the sparker may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period (30 min for all baleen whale species, long-finned pilot whales, and Risso's dolphins; 15 min for harbor porpoises) with no further detection of the marine mammal.

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 Level B harassment zone (56 m), shutdown must occur.

Vessel Strike Avoidance

Crew and supply vessel personnel must use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. 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 will 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.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel(s), or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammals. A single marine mammal at the surface may indicate the presence of 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 are 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 NARW, other whale (defined in this context as baleen whales other than NARWs), or other marine mammals.

All survey vessels, regardless of size, must observe a 10-kn (5.14 m/s) speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes. These include all seasonal management areas (SMA) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales* for specific detail regarding these areas.

- All vessels must reduce speed to 10 kn (5.14 m/s) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from NARWs, other ESA-listed species, and any unidentified large whales. If a NARW, other ESA-listed species, and any unidentified large whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 kn (5.14 m/s) or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a NARW, the vessel operator must

assume that it is a NARW and take appropriate action.

- All vessels must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Atlantic Shores and members of the PSO team will consult the NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations, and for the establishment of DMAs and/or Slow Zones. It is Atlantic Shores' responsibility to maintain awareness of the establishment and location of any such areas and to abide by these requirements accordingly.

Seasonal Operating Requirements

As described above, a section of the Survey Area partially overlaps with portions of two NARW SMAs off the ports of New York/New Jersey and the entrance to Delaware Bay. These SMAs are active from November 1 through April 30 of each year. The survey vessels, regardless of length, are required to adhere to vessel speed restrictions (less than 10 kn (5.14 m/s)) when operating within the SMAs during times when the SMAs are active (table 4).

TABLE 4—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREA

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Survey Area (outside SMA).	North Atlantic right whale.	If established by NMFS, all of Atlantic Shores' vessel will abide by the described restrictions.	If established by NMFS, all of Atlantic Shores' vessel will abide by the described restrictions.	N/A.
Survey Area (within SMA).	North Atlantic right whale.	If established by NMFS, all of Atlantic Shores' vessel will abide by the described restrictions.	If established by NMFS, all of Atlantic Shores' vessel will abide by the described restrictions.	November 1 through April 30 (Ports of New York/New Jersey and entrance to the Delaware Bay).

Note: More information on Vessel Strike Reduction for the NARW can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

Based on our evaluation of the applicant's planned measures, NMFS has determined that the planned 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.

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, 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.

Monitoring Measures

Visual monitoring must be performed by qualified, NMFS-approved PSOs. Atlantic Shores must submit PSO resumes for NMFS review and approval prior to commencement of the survey. Resumes should include dates of training and any prior NMFS approval, as well as dates and description of last experience, and must be accompanied by information documenting successful completion of an acceptable training course.

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 will 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.

At least one PSO aboard each acoustic source vessel must have a minimum of 90 days at-sea experience working in the role, with no more than 18 months elapsed since the conclusion of the at-sea experience. One PSO with such experience must be designated as the lead for the entire PSO team and serve as the primary point of contact for the vessel operator. (Note that the responsibility of coordinating duty schedules and roles may instead be assigned to a shore-based, third-party monitoring coordinator.) To the maximum extent practicable, the lead PSO must devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or more) a written and/or oral examination developed for the training program.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. 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).

Atlantic Shores 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) imaging 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 Atlantic Shores is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA. Reference materials must be available aboard all project vessels for identification of protected species.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including pre-start clearance and shutdown zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established pre-start clearance and 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.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to shutdown 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, appropriate night-vision devices (*e.g.,* night-vision goggles with thermal clip-ons and infrared technology) will be used. Position data will 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 must 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 and between acquisition periods. Any observations of marine mammals by crew members aboard the vessel associated with the survey will be relayed to the PSO team.

Data on all PSO observations will be recorded based on standard PSO collection requirements (see *Reporting Measures*). This will 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). Members of the PSO team shall consult the NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations.

Reporting Measures

Atlantic Shores shall submit a draft comprehensive report to NMFS 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 Environmental Systems Research Institute, Inc. (ESRI) shapefile format and include the Coordinated Universal Time (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. 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.clevenstine@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), vessel size and type, maximum speed capability of vessel;

2. Dates of departures and returns to port with port name;

3. PSO names and affiliations;

4. Date and participants of PSO briefings;

5. Visual monitoring equipment used;

6. PSO location on vessel and height of observation location above water surface;

7. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;

8. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;

9. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;

10. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;

11. Water depth (if obtainable from data collection software);

12. 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;

13. 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,

14. 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.*).

15. Upon visual observation of any marine mammal, the following information must be recorded:

a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

b. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);

c. PSO who sighted the animal;

d. Time of sighting;

e. Initial detection method;

f. Sightings cue;

g. Vessel location at time of sighting (decimal degrees);

h. Direction of vessel's travel (compass direction);

i. Speed of the vessel(s) from which the observation was made;

j. 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;

k. Species reliability (an indicator of confidence in identification);

l. Estimated distance to the animal and method of estimating distance;

m. Estimated number of animals (high/low/best);

n. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);

o. 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);

p. 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);

q. 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;

r. Equipment operating during sighting;

s. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and,

t. 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 NARW is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, Atlantic Shores must report the sighting information to the NMFS NARW Sighting Advisory System (866–755–6622) within 2 hr of occurrence, when practicable, or no later than 24 hr after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the Whale Alert app (*https://www.whalealert.org*).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the incident must be reported to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*). 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 event of a vessel strike of a marine mammal by any vessel involved in the activities, Atlantic Shores must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report will 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 1, given that some of the anticipated effects of this activity on these 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 sub-sections below. Specifically, we provide additional discussion related to NARW and to other species currently experiencing UMEs.

NMFS does not anticipate that serious injury or mortality will occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, non-auditory physical effects, auditory physical effects, and vessel strike are not expected to occur. NMFS expects that all potential takes will be in the form of Level B 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, Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 56 m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals 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 Survey Area and there are no feeding areas known to be biologically important to marine mammals within the Survey Area. There is no designated critical habitat for any ESA-listed marine mammals in the Survey Area.

North Atlantic Right Whales

The status of the NARW population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings attribute human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of NARWs. As noted previously, the Survey Area overlaps a migratory corridor BIA for NARWs that extends from Massachusetts to Florida and from the coast to beyond the shelf break. Due to the fact that the planned survey activities are temporary (will occur for up to 1 year) and the spatial extent of sound produced by the survey will be small relative to the spatial extent of the available migratory habitat in the BIA, NARW migration is not expected to be impacted by the survey. This important migratory area is approximately 269,488 km^2 in size (compared with the approximately 3,228 km^2 of total estimated Level B harassment ensonified area associated with the Survey Area) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts.

Given the relatively small size of the ensonified area, it is unlikely that prey availability will be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of vessel strike during migration; no vessel strike is expected to occur during Atlantic Shores' planned activities. Additionally, only very limited take by Level B harassment of NARWs has been requested and is authorized by NMFS as HRG survey operations are required to maintain and implement a 500-m shutdown zone. The 500-m shutdown zone for NARWs is conservative, considering the Level B harassment zone for the acoustic source (*i.e.,* sparker) is estimated to be 56 m, and thereby minimizes the intensity and duration of any potential incidents of behavioral harassment for this species. As noted previously, Level A harassment is not expected due to the small estimated zones in conjunction with the aforementioned shutdown requirements. NMFS does not anticipate NARW takes that will result from Atlantic Shores' planned activities will impact annual rates of recruitment or

survival. Thus, any takes that occur will 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' 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 (*i.e.,* vessel strike, 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.

Elevated numbers of harbor seal and gray seal mortalities were first observed from 2018–2020 and, as part of a separate UME, again in 2022. These have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus (2018–2020) and avian influenza (2022), although additional testing to identify other factors that may be involved in the UMEs is underway. The UMEs do not provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 60,000 and annual M/SI (339) is well below PBR (1,729) (Hayes *et al.,* 2022). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2021, Hayes *et al.,* 2022).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in table 3, including those with active UMEs, to the level of least practicable adverse impact. In particular, they will provide animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized.

NMFS expects that takes will be in the form of short-term Level B 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 will only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures will further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect 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 authorized;
- Foraging success is not likely to be significantly 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 ensonified areas during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B harassment only consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- Survey activities will occur in such a comparatively small portion of the BIA for the NARW migration that any avoidance of the area due to survey activities will not affect migration. In addition, mitigation measures require shutdown at 500 m (over eight times the size of the Level B harassment zone of 56 m) to minimize the effects of any Level B harassment take of the species; and
- The required mitigation measures, including 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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals 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 number of take NMFS has authorized relative to the best available population abundance is less than 1 percent for 14 of the 15 managed stocks (less than 7 percent for the Western North Atlantic Northern Migratory Coastal Stock of bottlenose dolphins; table 3). The take numbers authorized are considered conservative estimates for purposes of the small numbers determination as they assume all takes represent different individual animals, which is unlikely to be the case.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (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 NMFS GARFO.

NMFS Office of Protected Resources has authorized take of three species of marine mammals which are listed under the ESA (*i.e.,* NARW, fin whale, and sei whale) and has determined these activities fall within the scope of activities analyzed in the NMFS 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).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NAO 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) and alternatives 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 NAO 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 will preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Atlantic Shores for the harassment of small numbers of 14 marine mammal species (15 stocks) incidental to conducting marine site characterization surveys in waters off of New York, New Jersey, Delaware, and Maryland for a period of 1 year, that includes the previously explained mitigation, monitoring, and reporting requirements. The IHA can be found at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llcs-marine-site.*

Dated: March 18, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–06063 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* April 21, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 7910–00–685–3910—Pad, Machine, Polishing, Floor, 18″ x ¼″

Authorized Source of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

Service(s)

Service Type: Embroidery Service

Mandatory for: Embroidery of Urban Name Tapes: U.S. Marine Corps, Arlington, VA

Authorized Source of Supply: LIONS INDUSTRIES FOR THE BLIND, INC, Kinston, NC

Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Management of State Dept High Threat Division Kit

Mandatory for: Department of State, High Threat Division, 2216 Gallows Road, Dunn Loring, VA

Authorized Source of Supply: Virginia Industries for the Blind, Charlottesville, VA

Contracting Activity: STATE, DEPARTMENT OF, ACQUISITIONS—AQM MOMENTUM

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–06085 Filed 3–21–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Quarterly Public Meeting

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of public meeting.

DATES: April 25, 2024, from 1 p.m. to 4 p.m. ET.

ADDRESSES: The meeting will be held virtually only via Zoom webinar.

FOR FURTHER INFORMATION CONTACT: Angela Phifer, 355 E Street SW, Suite 325, Washington, DC 20024; (703) 798–5873; *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Committee for Purchase From People Who Are Blind or Severely Disabled is an independent government agency operating as the U.S. AbilityOne Commission. It oversees the AbilityOne Program, which provides employment opportunities through Federal contracts for people who are blind or have significant disabilities in the manufacture and delivery of products and services to the Federal Government. The Javits-Wagner-O'Day Act (41 U.S.C. chapter 85) authorizes the contracts.

Registration: Attendees *not* requesting speaking time should register not later than 11:59 p.m. ET on April 24, 2024. Attendees requesting speaking time must register not later than 11:59 p.m. ET on April 16, 2024, and use the comment fields in the registration form to specify the intended speaking topic/s. The registration link will be available by April 15, 2024, on the Commission's home page, *www.abilityone.gov,* under News and Events.

Commission Statement: This regular quarterly meeting will include updates from the Commission Chairperson, Executive Director, and Inspector General.

Public Participation: The public engagement session will cover two topics: (1) how digital accessibility and technology can support individuals who

are blind or have disabilities in their jobs and (2) how technology advances can support employee career development activities.

The Commission invites public comments and suggestions on the public engagement topic. During registration, you may choose to submit comments, or you may request speaking time at the meeting. The Commission may invite some attendees who submit advance comments to discuss their comments during the meeting. Comments submitted will be reviewed by staff and the Commission members before the meeting. Comments posted in the chat box during the meeting will be shared with the Commission members after the meeting. The Commission is not subject to the requirements of 5 U.S.C. 552(b); however, the Commission published this notice to encourage the broadest possible participation in its meeting.

Personal Information: Speakers should not include any information that they do not want publicly disclosed.

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–06087 Filed 3–21–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* April 21, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Deletions

On 2/16/2024, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
4020–01–625–5683—Bungee Rope, Flexible, w/Crimped Loops, 3 feet, Tan
4020–01–625–7190—Bungee Rope, Flexible, w/Crimped Loops, 3 feet, Black
4020–01–625–7196—Bungee Rope, Flexible, w/Crimped Loops, 5 feet, Black
4020–01–625–7203—Bungee Rope, Flexible, w/Crimped Loops, 3 feet, Camouflage
4020–01–625–7215—Bungee Rope, Flexible, w/Crimped Loops, 3 feet, Olive Drab
4020–01–625–8398—Bungee Rope, Flexible, w/Crimped Loops, 3 feet, Orange
4020–01–625–8403—Bungee Rope, Flexible, w/Crimped Loops, 5 feet, Camouflage
4020–01–625–8417—Bungee Rope, Flexible, w/Crimped Loops, 5 feet, Olive Drab
4020–01–625–8430—Bungee Rope, Flexible, w/Crimped Loops, 5 feet, Orange
4020–01–625–8441—Bungee Rope, Flexible, w/Crimped Loops, 5 feet, Tan
Authorized Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7530–01–156–9775—Paper, Xerographic, Dual Purpose, 3-Hole Punched, Blue, 8.5″ x 11″
Authorized Source of Supply: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
6550–00–NIB–0023—Test Cup, Drug Detection, Round, 2⅞″ D x 3½″ H, 13-panel dipcard
Authorized Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7510–00–582–4201—Binder, Loose-leaf, Report Cover, Pressboard, 3″ Capacity, Earth Red, 11″ x 8½″
7510–00–281–4309—Binder, Loose-leaf, Report Cover, Pressboard, 3″ Capacity, Earth Red, 8½″ x 11″
7510–00–281–4310—Binder, Loose-leaf, Report Cover, Pressboard, 3″ Capacity, Earth Red, 11″ x 17″
7510–00–281–4313—Binder, Loose-leaf, Report Cover, Pressboard, 6″ Capacity, Earth Red, 11″ x 8½″
7510–00–281–4314—Binder, Loose-leaf, Report Cover, Pressboard, 3″ Capacity, Earth Red, 8½″ x 14″
7510–00–286–7794—Binder, Loose-leaf, Report Cover, Pressboard, No Fastener, 3″ Capacity, Earth Red, 8½″ x 11″
Designated Source of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
7510–01–357–6829—Pad, Executive Message Recording, White/Yellow, 2⅝″ x 6¼″, 200 Message Forms
Authorized Source of Supply: VisionCorps, Lancaster, PA
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
MR 11049—Bag, Tote, Reusable, Collapsible, Summer
MR 11096—Bag, Tote, Reusable, Collapsible, Christmas
MR 11086—Bag, Tote, Reusable, Collapsible, Halloween
MR 11122—Bag, Laminated, Large, Fresh Time
MR 11123—Bag, Laminated, Large, Menu
MR 11124—Bag, Laminated, Large, Baking
MR 11125—Bag, Laminated, Large, Grill Meat
MR 11126—Bag, Tote, Reusable, Collapsible, Everyday
MR 11127—Bag, Laminated, Large, Earth Day
MR 11131—Reusable Shopping Bag, Veterans' Day
MR 11133—Bag, Large, Laminated, U.S.A. Flag and Fireworks
MR 11134—Bag, Large, Laminated, U.S.A. Flag
MR 11135—Bag, Collapsible, Flags with Poles
MR 11137—Bag, Gift, Valentine's Day, Two Hearts With Love

MR 11138—Bag, Gift, Valentine's Day, Cube, Hearts
MR 11139—Bag, Laminated, Large, Hanukkah, Menorah
MR 11140—Bag, Cube, Hanukkah, Menorah
MR 11141—Bag, Gift, Birthday
MR 11142—Bag, Laminated, Large, Birthday Cake
MR 11143—Bag, Collapsible, Birthday Balloons
MR 11091—Bag, Laminated, Large, Easter Design 1
MR 11092—Bag, Laminated, Large, Easter Design 2
MR 11093—Bag, Tote, Reusable, Collapsible, Easter
MR 11094—Bag, Reusable, Laminated Gift Size, Easter Design 1
MR 11095—Bag, Reusable, Laminated Gift Size, Easter Design 2
MR 13067—Container, Clip Top, Ice Pack, Assorted Colors
MR 13068—Container, Multi-Pack, Assorted Colors
MR 13069—Container, Noodles, Assorted Colors
MR 13070—Mug, Soup, 24 oz, Assorted Colors
MR 13071—Mug, Thermal, Assorted Colors
MR 13072—Container, Snap Top, Assorted Colors

Authorized Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 11133—Bag, Large, Laminated, U.S.A. Flag and Fireworks
Authorized Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 1177—Refill, Mop, Sticky
MR 587—Dual Action Dish Wand Refill
MR 924—Mop, Block Sponge w/Scrubber Strip
MR 934—Refill, MR 924 Block w/Scrubber
MR 1057—Butterfly Mop, Hybrid Sponge
MR 1058—Refill, Hybrid Sponge Head, Blue
Authorized Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 533—SKILCRAFT Bio Serve Flatware
Authorized Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: DEFENSE COMMISSARY AGENCY, FORT GREGG–ADAMS, VA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–06088 Filed 3–21–24; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2024–0009; OMB Control Number 0704–0397]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS Part 243, Requests for Equitable Adjustment

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0397 through July 31, 2024. DoD proposes that OMB extend approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 21, 2024.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0397, using either of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0397 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: David Johnson, 202–913–5764.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 243, Contract Modifications and Related Clause at DFARS 252.243–7002; OMB Control Number 0704–0397.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Number of Respondents: 142.

Responses per Respondent: 1.

Annual Responses: 142.

Average Burden per Response: 5.2 hours, approximately.

Annual Burden Hours: 734.

Frequency: On occasion.

Needs and Uses: The information collection required by the clause at DFARS 252.243–7002, Requests for Equitable Adjustment, implements 10 U.S.C. 3862(a). The clause requires contractors to certify that requests for equitable adjustment exceeding the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The clause also requires contractors to fully disclose all facts relevant to the requests for equitable adjustment. DoD contracting officers and auditors use this information to evaluate contractor requests for equitable adjustments to contracts.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024–06110 Filed 3–21–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2024–0011; OMB Control Number 0704–0533]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS Part 249, Termination of Contracts, and a Related Clause

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed

collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0533 through July 31, 2024. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 21, 2024.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0533, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0533 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: David Johnson, 202–913–5764.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 249, Termination of Contracts, and a Related Clause at DFARS 252.249–7002, Notification of Anticipated Contract Termination or Reduction; OMB Control Number 0704–0533.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Number of Respondents: 42

Responses per Respondent: 6.19, approximately.

Annual Responses: 260.

Average Burden per Response: 0.74 hour, approximately.

Annual Burden Hours: 193.

Frequency: On occasion.

Needs and Uses: Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.249–7002, Notification of Anticipated Contract Termination or Reduction, is used in all contracts under a major defense program. This clause requires contractors, within 60 days after receipt of notice from the contracting officer of an anticipated termination or substantial reduction of a contract, to provide notice of the anticipated termination or substantial reduction to first-tier subcontractors with a subcontract valued at $700,000 or more. The clause also requires flowdown of the notice requirement to lower-tier subcontractors with a subcontract value at $150,000 or more. The purpose of this requirement is to help establish benefit eligibility under the Workforce Innovation and Opportunity Act (29 U.S.C. Chapter 32) for employees of DoD contractors and subcontractors adversely affected by contract termination or substantial reductions under major defense programs.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024–06112 Filed 3–21–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2024–0010; OMB Control Number 0704–0519]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 204.17, Service Contracts Inventory

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0519 through July 31, 2024. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by May 21, 2024.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0519, using either of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0519 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Ziegler, at 703–901–3176.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 204.17, Service Contracts Inventory and Associated Clause; OMB Control Number 0704–0519.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 1,934.

Responses per Respondent: Approximately 2.3.

Annual Responses: 4,384.

Average Burden per Response: 2 hours.

Annual Burden Hours: 8,768.

Needs and Uses: This information collection covers the burden hours related to the requirement at DFARS subpart 204.17, Service Contracts Inventory, and its associated clause, 252.204–7023, Reporting Requirements for Contracted Services. DFARS subpart 204.17 and the clause at 252.204–7023 implement 10 U.S.C. 4505 (formerly 10 U.S.C. 2330a), as amended by section 812 of National Defense Authorization Act for Fiscal Year 2017, which requires DoD to establish a data collection system to provide certain management information with regard to each purchase of services by a military department or agency that exceeds $3 million for services in the following service acquisition portfolio groups: logistics management services, equipment-related services, knowledge-based services, and electronics and communications services.

The basic DFARS clause 252.204–7023, Reporting Requirements for

Contracted Services, and its alternate I require a contractor to report annually, in the System for Award Management, on the services performed under the contract or order, during the preceding Government fiscal year. Specifically, the contractor is required to report the following: the total dollar amount invoiced for services performed during the preceding fiscal year; and the number of direct labor hours, including subcontractor hours (when applicable), expended on services performed during the previous Government fiscal year.

This information collection will provide DoD with the ability to identify and report annually to Congress, in accordance with 10 U.S.C. 4505, on the inventory of contractor service contract actions. As an adjunct, the information will support DoD's total force management and in making strategic workforce planning and budget decisions pursuant to 10 U.S.C. 129a.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024–06111 Filed 3–21–24; 8:45 am]

BILLING CODE 6001–eFR–P

DEPARTMENT OF ENERGY

21st Century Energy Workforce Advisory Board

AGENCY: Office of Energy Jobs, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open virtual meeting for members and the public of the 21st Century Energy Workforce Advisory Board (EWAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 16, 2024; 3 p.m. to 4:30 p.m. EDT.

ADDRESSES: Virtual meeting.

Registration to participate remotely is available: *https://doe.webex.com/doe/j.php?MTID=mb31c55023ab755ab613a9f042600c6da.*

The meeting information will be posted on the 21st Century Energy Workforce Advisory Board website at: *https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab,* and can also be obtained by contacting *EWAB@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Maya Goodwin, Acting Designated Federal Officer, EWAB; email: *EWAB@hq.doe.gov* or at 240–597–8804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The 21st Century Energy Workforce Advisory Board (EWAB) advises the Secretary of Energy in developing a strategy for the Department of Energy (DOE) to support and develop a skilled energy workforce to meet the changing needs of the U.S. energy system. It was established pursuant to section 40211 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58 (42 U.S.C. 18744) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. This is the eighth meeting of the EWAB.

Tentative Agenda: The meeting will start at 3 p.m. eastern time on April 16, 2024. The tentative meeting agenda includes roll call, discussion of the Board's upcoming report, and public comments. The meeting will conclude at approximately 4:30 p.m.

Public Participation: The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register for the meeting here: *https://doe.webex.com/doe/j.php?MTID=mb31c55023ab755ab613a9f042600c6da.* It is the policy of the EWAB to accept written public comments no longer than 5 pages and to accommodate oral public comments, whenever possible. The EWAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on April 16, 2024 at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on the EWAB's work, not for business marketing purposes. The Designated Federal Officer will conduct the meeting to facilitate the orderly conduct of business.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak by contacting *EWAB@hq.doe.gov* no later than 12 p.m. eastern time on April 9, 2024. To accommodate as many speakers as possible, the time for public comments will be limited to three (3) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, the EWAB will select speakers on a first-come, first-served basis from those who applied. Those not able to present oral comments may always file written comments with the Board.

Written Comments: Although written comments are accepted continuously, written comments relevant to the subjects of the meeting should be submitted to *EWAB@hq.doe.gov* no later than 12 p.m. eastern time on April 9, 2024, so that the comments may be made available to the EWAB members prior to this meeting for their consideration. Please note that because EWAB operates under the provisions of FACA, all public comments and related materials will be treated as public documents and will be made available for public inspection, including being posted on the EWAB website.

Minutes: The minutes of this meeting will be available on the 21st Century Energy Workforce Advisory Board website at *https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab* or by contacting Maya Goodwin at *EWAB@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on March 13, 2024, by David Borak, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 19, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–06099 Filed 3–21–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information on Measurement and Verification Guidelines for Performance-Based Contracts

AGENCY: Office of Federal Energy Management Program, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on updates to the measurement and verification (M&V) guidelines for performance-based contracts. The M&V guidelines provide procedures for verifying and quantifying the savings resulting from energy-efficient equipment, water conservation, improved operation and maintenance, renewable energy, and cogeneration

projects installed under performance-based contracts. DOE seeks to update the existing guidance.

DATES: Responses to the RFI must be received by April 19, 2024.

ADDRESSES: Interested parties are to submit comments electronically to *MV5.0Feedback@hq.doe.gov.* Include ''M&V Guidelines Update'' in the subject line of the email. Only electronic responses will be accepted. The draft ''M&V Guidelines: Measurement and Verification for Performance-Based Contracts Version 5.0'' is located at *https://www.energy.gov/femp/measurement-and-verification-federal-energy-savings-performance-contracts.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Priya Stiller, 240–252–9592, *Priya.Stiller@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Federal Energy Management Program (FEMP) has drafted an update to the FEMP M&V Guidelines: Measurement and Verification for Performance-Based Contracts Version 4.0, released in November 2015. Draft edits to the current version include clarification on the application of M&V options used in performance-based projects, based on review of the FEMP energy savings performance contract (ESPC) program and feedback from stakeholders; and a reorganization of and additions to the guidance for specific energy conservation measures in Section 6.0. The appendices reflect DOE ESPC indefinite-delivery, indefinite-quantity (IDIQ) program-specific outline updates for the required M&V plan, post-installation report and annual report. Similarly, the Risk Responsibility and Performance Matrix has been updated to reflect the most recent version (2023) of the DOE ESPC IDIQ contract requirements. The draft guidelines would remain applicable to all performance-based contracts.

The draft ''M&V Guidelines: Measurement and Verification for Performance-Based Contracts Version 5.0'' is located at *https://www.energy.gov/femp/measurement-and-verification-federal-energy-savings-performance-contracts.*

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority: This document of the Department of Energy was signed on March 14, 2024, by Mary Sotos, Director, Office of Federal Energy Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 19, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–06100 Filed 3–21–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4678–053]

New York Power Authority; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 4678–053.

c. *Date Filed:* May 25, 2022.

d. *Applicant:* New York Power Authority (NYPA).

e. *Name of Project:* Crescent Hydroelectric Project (Crescent Project or project).

f. *Location:* On the Mohawk River in Saratoga, Albany, and Schenectady Counties, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rob Daly, Director of Licensing, NYPA, 123 Main Street, White Plains, NY 10601; Telephone: (914) 681–6564 or *Rob.Daly@nypa.gov.*

i. *FERC Contact:* Jody Callihan at (202) 502–8278, or *jody.callihan@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Crescent Hydroelectric Project (P–4678–053).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Crescent Project consists of:* (1) Crescent dam, which includes two main concrete gravity overflow sections that are 901 feet long, 52 feet high (eastern

section) and 534 feet long, 32 feet high (western section), and a smaller 16-foot-high, 530-foot-long dam located immediately downstream of the main western dam; (2) an impoundment with a surface area of 2,108 acres and a gross storage capacity of 50,000 acre-feet at an elevation of 184 feet Barge Canal Datum (BCD) (1-foot-high flashboards seasonally installed during the navigation season add 2,000 acre-feet of storage); (3) a regulating structure consisting of an 8-foot-wide sluiceway and a 30-foot-wide Tainter gate located at the main western dam; (4) a 73-foot-wide, 180-foot-long brick and concrete powerhouse containing two Francis turbine-generator units rated at 2.8 megawatts (MW) each and two vertical Kaplan turbine-generator units rated at 3.0 MW each; (5) navigation lock E–6 of the Erie Canal and Guard Gates 1 and 2 of the Waterford Flight; (6) a switchyard; (7) generator leads and transformer banks; and (8) appurtenant facilities.

The Crescent Project is operated in a run-of-river mode such that outflow from the project approximates inflow, and the impoundment is maintained within 6 inches of the dam crest (or top of the flashboards, when installed). A year-round, continuous minimum flow of 100 cubic feet per second (cfs) is provided at the project. During the navigation season (typically mid-May through mid-October), the 100-cfs minimum flow is provided as part of a fish passage flow (250 cfs) that is released through a notch (absence of flashboards) in the eastern dam; during the remainder of the year (non-navigation season), the minimum flow is typically provided as part of generation flows. An acoustic deterrent system is seasonally deployed upstream of the project, from May through October, to guide blueback herring that are migrating downstream towards non-turbine routes of passage (notches in the flashboards). Average annual generation at the Crescent Project is 58,250 MW-hours. NYPA is not proposing any new project facilities or changes to existing facilities and the operation of the project at this time.

m. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *The applicant must file no later than 60 days following the date of issuance of this notice:* (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Filing of Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions: May 17, 2024.

Filing of Reply Comments: July 1, 2024.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: March 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06135 Filed 3–21–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–87–000]

Northwest Pipeline LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on March 7, 2024, Northwest Pipeline LLC (Northwest), Post Office Box 1396, Houston, Texas 77251, filed in the above referenced docket a prior notice request pursuant to sections 157.203, 157.205, and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and Northwest's blanket certificate issued in Docket No. CP82–433–000, for authorization of its 2024 Line 1400 and 1401 Intermountain Pipe Replacement Project in Ada County, Idaho (Project). Specifically, Northwest proposes to remove and replace with like-size facilities (1) approximately 3.52 miles of 22-inch-diameter mainline (Line 1400), (2) 2.02 miles of 24-inch-diameter loop pipeline (Line 1401), and (3) associated facilities. Northwest states that the Project is designed to bring these sections of pipeline in compliance with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration's requirement for high consequence area classification changes. Furthermore, Northwest asserts that there will be no change to its certificated capacity as a result of the Project. Northwest estimates the cost of

the Project to be approximately $23,629,734, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

Any questions concerning this request should be directed to Andre Pereira, Manager, Certificates and Modernization, Northwest Pipeline LLC, Post Office Box 1396, Houston, Texas 77251–1396, by email at *Andre.S.Pereira@Williams.com*, or by phone at (713) 215–4362.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on May 17, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is May 17, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is May 17, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 17, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–87–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–87–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission,

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Andre Pereira, Manager, Certificates and Modernization, Northwest Pipeline LLC, Post Office Box 1396, Houston, Texas 77251–1396, or by email at *Andre.S.Pereira@Williams.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06139 Filed 3–21–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–80–000]

Mississippi Hub LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on March 5, 2024, Mississippi Hub LLC, (MS Hub), 10375 Richmond Ave., Suite 1900, Houston, Texas 77042, filed an application under section 7c of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization for its MS Hub Capacity Expansion Project (Project). The Project consists of (1) an increase in the size of two existing gas caverns by 3.87 billion cubic feet (Bcf) at the MS Hub Storage Facility (2) the installation of three new 10 Bcf natural gas storage caverns ; and (3) a new booster compressor unit, along with associated compression, dehydration, saltwater disposal wells, and other ancillary facilities to accommodate the expansion. constructing and operating new natural gas storage and pipeline facilities, and to modify previously Commission-authorized natural gas storage facilities in Simpson, Covington, and Jefferson Davis Counties, Mississippi. The Project will add up to 0.7 Bcf/day of injection capacity, and up to 1.0 Bcf/day of delivery capacity, which is within MS Hub's current certificated levels. MS Hub estimates the total cost of the Project to be $237,877,444 and requests reaffirmation of MS Hub's authority to provide interstate storage and storage-related services at market-based rates all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

Any questions regarding the proposed project should be directed to Todd Cash, VP Compliance & Sustainability, Enstor Gas, LLC, 10375 Richmond Ave., Suite 1900, Houston, Texas 77042 by phone at (281) 374–3050, or by email at *todd.cash@enstorinc.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Water Quality Certification

MS Hub's application states that a water quality certificate under section 401 of the Clean Water Act is required for the project from Mississippi Department of Environmental Quality. The request for certification must be submitted to the certifying agency and to the Commission concurrently. Proof of the certifying agency's receipt date must be filed no later than five (5) days after the request is submitted to the certifying agency.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5 p.m. eastern time on April 8, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to

[1] 18 CFR (Code of Federal Regulations) 157.9.

contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before April 8, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24–80–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP24–80–000).

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[7] and the regulations under the NGA[8] by the intervention deadline for the project, which is April 8, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP24–80–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP24–80–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email at: Todd Cash, VP Compliance & Sustainability, Enstor Gas, LLC, 10375 Richmond Ave., Suite 1900, Houston, Texas 77042 or at email at *todd.cash@enstorinc.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5 p.m. eastern time on April 8, 2024.

Dated: March 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06140 Filed 3–21–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Institution of Section 206 Proceeding and Refund Effective Date

	Docket Nos.
Cottontail Solar 4, LLC	EL24–77–000
Cottontail Solar 5, LLC	EL24–78–000
Cottontail Solar 6, LLC	EL24–79–000

On March 18, 2024, the Commission issued an order in Docket Nos. EL24–77–000, EL24–78–000, and EL24–79–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Cottontail Solar 4, LLC, Cottontail Solar 5, LLC, and Cottontail Solar 6, LLC's (collectively, Applicants) Rate Schedules are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Cottontail Solar 4, LLC, et al.,* 186 FERC ¶ 61,187 (2024).

The refund effective date in Docket Nos. EL24–77–000, EL24–78–000, and EL24–79–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**, or the dates Applicants' Rate Schedules each become effective, whichever is later, provided, however, if the Rate Schedules do not become effective until after 5 months from the date of publication of the notice, the refund effective dates shall be 5 months from the date of publication of the notice.

Any interested person desiring to be heard in Docket Nos. EL24–77–000, EL24–78–000, and EL24–79–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06137 Filed 3–21–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6412–001]

Empire Hydro Partners, Lyonsdale Hydroelectric Co., Inc.; Notice of Transfer of Exemption

1. By letter filed March 1, 2024, Empire Hydro Partners and Lyonsdale Hydroelectric Co., Inc. informed the Commission that the exemption from licensing for the Port Leyden Project No. 6412, originally issued April 4, 1983,[1] has been transferred to Lyonsdale Hydroelectric Co., Inc. The project is located on the Black River in the Village of Port Leyden, Towns of Leyden and Lyonsdale, Lewis County, New York. The transfer of an exemption does not require Commission approval.

2. Lyonsdale Hydroelectric Co., Inc., located at 35 Harbor Cove Drive, The Woodlands, Texas 77381 is now the exemptee of the Port Leyden Project No. 6412.

Dated: March 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06134 Filed 3–21–24; 8:45 am]

BILLING CODE 6717–01–P

[11] 18 CFR 385.214(b)(3) and (d).

[1] *Lyonsdale Hydroelectric Co., Inc.,* 23 FERC ¶ 62,005 (1983) (Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or Less).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–136–000.
Applicants: Ables Springs Solar, LLC.
Description: Ables Springs Solar, LLC submits Notice of Self-Certification of exempt Wholesale Generator Status.
Filed Date: 3/15/24.
Accession Number: 20240315–5269.
Comment Date: 5 p.m. ET 4/5/24.

Docket Numbers: EG24–137–000.
Applicants: Ables Springs Storage, LLC.
Description: Ables Springs Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/15/24.
Accession Number: 20240315–5270.
Comment Date: 5 p.m. ET 4/5/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–90–000.
Applicants: Energy Management Solutions, L.L.C. v. *PJM Interconnection, L.L.C.*
Description: Complaint of Energy Management Solutions, L.L.C. v. *PJM Interconnection, L.L.C.*
Filed Date: 3/15/24.
Accession Number: 20240315–5250.
Comment Date: 5 p.m. ET 4/4/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2004–005.
Applicants: Public Service Electric and Gas Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Public Service Electric and Gas Company submits tariff filing per 35: PSE&G Compliance Filing in ER20–2004 to be effective 1/27/2020.
Filed Date: 3/18/24.
Accession Number: 20240318–5205.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–695–001.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Rhineng BESS LGIA Deficiency Response to be effective 12/4/2023.
Filed Date: 3/18/24.
Accession Number: 20240318–5168.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–713–001.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Pinewood Solar LGIA Deficiency Response to be effective 12/9/2023.
Filed Date: 3/18/24.
Accession Number: 20240318–5129.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–714–001.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Zurisol (Rockdale Storage) LGIA Deficiency Response to be effective 12/8/2023.
Filed Date: 3/18/24.
Accession Number: 20240318–5131.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–750–001.
Applicants: Town Hill Energy Storage 1 LLC.
Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authority to be effective 1/1/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5200.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1526–000.
Applicants: New Market Solar ProjectCo 1, LLC.
Description: Initial rate filing: Reactive Rate Service as FERC Rate Schedule No. 2 to be effective 5/1/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5094.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1528–000.
Applicants: New Market Solar ProjectCo 2, LLC.
Description: Initial rate filing: Reactive Rate Service as FERC Rate Schedule No. 2 to be effective 5/1/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5096.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1543–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE–LADWP PDCI Amendments 1 and 2 to be effective 5/18/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5135.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1544–000.
Applicants: Duke Energy Indiana, LLC.
Description: § 205(d) Rate Filing: 2024 Annual Reconciliation filing—DEI Rate Schedule No. 253 to be effective 7/1/2023.
Filed Date: 3/18/24.
Accession Number: 20240318–5136.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1549–000.
Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits one Facilities Agreement re: ILDSA, SA No. 5120 to be effective 5/20/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5171.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1550–000.
Applicants: Tucson Electric Power Company.
Description: Baseline eTariff Filing: TEP Reserve Energy Service Tariff to be effective 5/1/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5172.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1553–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Big Country Electric Cooperative 1st Amended TSA to be effective 2/25/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5208.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: ER24–1554–000.
Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: Compliance filing: Duke Energy Progress, LLC submits tariff filing per 35: Compliance Filing Containing Revisions to Attachment K to Joint OATT to be effective 11/1/2025.
Filed Date: 3/18/24.
Accession Number: 20240318–5216.
Comment Date: 5 p.m. ET 4/8/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06133 Filed 3–21–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–93–000]

Notice of Application and Establishing Intervention Deadline; Venice Gathering System, LLC

Take notice that on March 12, 2024 Venice Gathering System, LLC (VGS LLC), 2103 Research Forest Drive, Suite 300, The Woodlands, Texas 77380, filed an application under section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to abandon in place its Venice Gathering System (VGS) consisting of approximately 121.5 miles of 8-inch to 26-inch diameter pipeline from offshore South Timbalier Block 151 and West Delta Blocks 41 and 72 in the Gulf of Mexico to an onshore interconnection with Venice Energy Services Company, LLC's natural gas processing plant, near the town of Venice, in Plaquemines Parish, Louisiana. VGS LLC states that its VGS is no longer required to meet its service obligations, and no shippers have received or requested service on the facilities during the past three years, nor are any expected to, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

Any questions regarding the proposed project should be directed to Christopher A. Capsimalis or Casey Scavone, Venice Gathering System, LLC, 2103 Research Forest Drive, Suite 300, The Woodlands, Texas 77380, by phone at (281) 681–9500 or by email at *caps@rosefieldpipeline.com* or *cscavone@rosefieldpipeline.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on April 8, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before April 8, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24–93–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number CP24–93–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[7] and the regulations under the NGA[8] by the intervention deadline for the project, which is April 8, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP24–93–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP24–93–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email at: Christopher A. Capsimalis or Casey Scavone, Venice Gathering System, LLC, 2103 Research Forest Drive, Suite 300, The Woodlands, Texas 77380, *caps@rosefieldpipeline.com* or *cscavone@rosefieldpipeline.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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Intervention Deadline: 5:00 p.m. Eastern Time on April 8, 2024.

Dated: March 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06138 Filed 3–21–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

Filings Instituting Proceedings

Docket Numbers: PR24–58–000.
Applicants: EasTrans, LLC.
Description: § 284.123 Rate Filing: EasTrans Rate Certification to be effective 4/1/2024.
Filed Date: 3/15/24.
Accession Number: 20240315–5107.
Comment Date: 5 p.m. ET 4/5/24.

Docket Numbers: PR24–59–000.
Applicants: Washington Gas Light Company.
Description: § 284.123 Rate Filing: Washington Gas Light Company Cost & Revenue Study to be effective 4/1/2024.
Filed Date: 3/15/24.
Accession Number: 20240315–5110.
Comment Date: 5 p.m. ET 4/5/24.

Docket Numbers: PR24–60–000.
Applicants: Columbia Gas of Virginia Inc.
Description: § 284.123 Rate Filing: Revisions to Statement of Operating Conditions to be effective 2/29/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5082.
Comment Date: 5 p.m. ET 4/8/24.

Docket Numbers: RP24–525–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Various Shippers on 03/15/2024 to be effective 4/1/2024.
Filed Date: 3/15/24.
Accession Number: 20240315–5176.
Comment Date: 5 p.m. ET 3/27/24.

Docket Numbers: RP24–526–000.
Applicants: MoGas Pipeline LLC.
Description: § 4(d) Rate Filing: Mogas Negotiated Rate Agreement Filing to be effective 4/1/2024.
Filed Date: 3/15/24.
Accession Number: 20240315–5238.
Comment Date: 5 p.m. ET 3/27/24.

Docket Numbers: RP24–527–000.
Applicants: PPG Shawville Pipeline, LLC.
Description: § 4(d) Rate Filing: Normal filing 2024 Clean-up to be effective 4/1/2024.
Filed Date: 3/18/24.
Accession Number: 20240318–5086.
Comment Date: 5 p.m. ET 4/1/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–457–001.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: Tariff Amendment: TIGT 2024–03–15 RP24–457 Amendment to be effective 4/1/2024.
Filed Date: 3/15/24.
Accession Number: 20240315–5131.
Comment Date: 5 p.m. ET 3/22/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: March 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–06132 Filed 3–21–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–118]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed March 11, 2024 10 a.m. EST

Through March 18, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240045, Final Supplement, FHWA, WI, I–94 East–West (16th Street–70th Street) Milwaukee County, WI, *Contact:* Bethaney Bacher-Gresock 608–662–2119.

Under 23 U.S.C. 139(n)(2), FHWA has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20240046, Final, FAA, GA, ADOPTION—Moody Air Force Base Comprehensive Airspace Initiative, *Contact:* Veronda Johnson 404–305–5598.

The Federal Aviation Administration (FAA) has adopted the United States Air Force's Final EIS No. 20230064 filed 05/09/2023 with the Environmental Protection Agency. The FAA was a cooperating agency on this project. Therefore, republication of the document is not necessary under section 1506.3(b)(2) of the CEQ regulations.

EIS No. 20240047, Final, USACE, TX, Proposed Corpus Christi Ship Channel Deepening Project, *Review Period Ends:* 04/22/2024, *Contact:* Jayson Hudson 409–766–3108.

EIS No. 20240048, Draft, APHIS, NAT, Monsanto Petition (19–316–01p) for Determination of Nonregulated Status for Dicamba, Glufosinate, Quizalofop, and 2,4-D Tolerant MON 87429 Maize with Tissue-Specific Glyphosate Tolerance Facilitating the Production of Hybrid Maize Seed [OECD Unique Identifier: MON–87429–9], *Comment Period Ends:* 05/06/2024, *Contact:* Joseph Tangredi 301–851–4061.

EIS No. 20240049, Final, FRA, DC, Washington Union Station Expansion Project, *Contact:* Amanda Murphy 202–493–0413.

Under 23 U.S.C. 139(n)(2), FRA has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20240050, Final, NPS, USFWS, WA, Grizzly Bear Restoration Plan—Environmental Impact Statement North Cascades Ecosystem, *Review Period Ends:* 04/22/2024, *Contact:* Denise Shultz 360–854–7200.

EIS No. 20240051, Draft, USFS, NE, Nebraska National Forests and

Grasslands Undesirable Plant Management, *Comment Period Ends:* 05/13/2024, *Contact:* Kim Dolatta 701–842–2393.

Dated: March 18, 2024.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2024–06098 Filed 3–21–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–116]

Notice of Adoption of Department of Energy Categorical Exclusion Under the National Environmental Policy Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of adoption of categorical exclusions.

SUMMARY: The Environmental Protection Agency (EPA) is adopting two categorical exclusions (CEs) from the Department of Energy (DOE) under the National Environmental Policy Act (NEPA) for drop-off, collection, and transfer facilities for recyclable materials and for installation or relocation of machinery and equipment, to use in EPA's programs and in funding opportunities administered by EPA. This notice describes the categories of proposed actions for which EPA intends to use DOE's CEs and describes the consultation between the agencies.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Dan Halpert, EPA Solid Waste Infrastructure for Recycling Program, by phone at 202–566–0816 or by email at *halpert.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NEPA and CEs

The National Environmental Policy Act, as amended at, 42 U.S.C. 4321–4347 (NEPA), requires all Federal agencies to assess the environmental impact of their actions. Congress enacted NEPA in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA's twin aims are to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4331. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an environmental impact statement (EIS), environmental assessment (EA), or CE. 42 U.S.C. 4336. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 42 U.S.C. 4336. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. 42 U.S.C. 4336. Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in its agency NEPA procedures. 42 U.S.C. 4336(e)(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental effects, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to ''adopt'' and use another agency's CEs for a category of proposed agency actions. 42 U.S.C. 4336(c). To use another agency's CEs under section 109, the adopting agency must identify the relevant CEs listed in another agency's (''establishing agency'') NEPA procedures that cover the adopting agency's category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE to a category of actions is appropriate; identify to the public the CE that the adopting agency plans to use for its proposed actions; and document adoption of the CE. *Id.* This notice describes EPA's adoption of DOE's CEs under section 109 of NEPA to use in EPA's program and in funding opportunities administered by EPA.

EPA's Program

EPA intends to use DOE's recycling facilities and equipment installation CEs in EPA's program and in funding opportunities, including those administered by the EPA Solid Waste Infrastructure for Recycling (SWIFR) Program.

The SWIFR Program provides funding to eligible entities to implement the National Recycling Strategy to improve post-consumer materials management and infrastructure; support improvements to local post-consumer materials management and recycling programs; and assist local waste management authorities in making improvements to local waste management systems. The SWIFR program funds projects for the siting, construction, modification, and operation of recycling or compostable material drop-off, collection, and transfer station facilities. Funding administered by the SWIFR program may also be used at these recycling, reuse, composting, or other waste management facilities for the installation or relocation and operation of machinery and equipment, such as crushers, shredders, sorters, and baling equipment. EPA also intends to use the DOE CEs adopted through this notice for activities administered under other EPA programs that meet this description of SWIFR program activities.

II. Identification of the Categorical Exclusions

EPA is adopting two CEs from DOE for drop-off, collection, and transfer facilities for recyclable materials and for the installation or relocation of machinery and equipment.

DOE's CE for recycling facilities is codified in DOE's NEPA procedures as CE B1.35 of 10 CFR part 1021, subpart D, appendix B, as follows:

B1.35 Drop-Off, Collection, and Transfer Facilities for Recyclable Materials. The siting, construction, modification, and operation of recycling or compostable material drop-off, collection, and transfer stations on or contiguous to a previously disturbed or developed area and in an area where such a facility would be consistent with existing zoning requirements. The stations would

have appropriate facilities and procedures established in accordance with applicable requirements for the handling of recyclable or compostable materials and household hazardous waste (such as paint and pesticides). Except as specified above, the collection of hazardous waste for disposal and the processing of recyclable or compostable materials are not included in this class of actions.

DOE's CE for equipment installation or relocation is codified in DOE's NEPA procedures as CE B1.31 of 10 CFR part 1021, subpart D, appendix B, as follows:

B1.31 Installation or Relocation of Machinery and Equipment. Installation or relocation and operation of machinery and equipment (including, but not limited to, laboratory equipment, electronic hardware, manufacturing machinery, maintenance equipment, and health and safety equipment), provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure. Covered actions include modifications to an existing building, within or contiguous to a previously disturbed or developed area, that are necessary for equipment installation and relocation. Such modifications would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts.

''Previously disturbed or developed'' refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to nonnative species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. 10 CFR 1021.410(g)(1).

The DOE CEs also include additional conditions referred to as integral elements (10 CFR part 1021, subpart D, appendix B). In order to apply these CEs, the proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of EPA [1] or Executive orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a federally recognized Indian Tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, State, or local government, federally recognized Indian Tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or federally proposed or candidate species or their habitat (Endangered Species Act); State listed or State-proposed endangered or threatened species or their habitat; federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands;

(iv) Areas having a special designation such as federally and State designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), ''Farmland Protection Policy Act: Definitions,'' or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, EPA, and the National Institutes of Health.

Proposed EPA Category of Actions

EPA intends to apply CE B1.35 to support proposals for the siting, construction, modification, and operation of recycling or compostable material drop-off, collection, and transfer station projects. Activities under this CE may be undertaken directly by EPA or be financed in whole or in part through Federal funding opportunities, including those administered by the SWIFR Program. The siting, construction, modification, and operation of drop-off, collection, and transfer stations must be on or contiguous to a previously disturbed or developed area, in an area where such a facility would be consistent with existing zoning requirements, and the stations would have appropriate facilities and procedures established in accordance with applicable requirements for the handling of recyclable or compostable materials and households hazardous waste (such as paint and pesticides). EPA will also review each proposal for the limitations in applying the CE to ensure that the proposal is within the scope of the CE and will not involve the collection of hazardous waste for disposal or the processing of recyclable or compostable materials.

EPA intends to apply CE B1.31 to support proposals for the installation or relocation of machinery and equipment, such as crushers, shredders, sorters, and baling equipment, at recycling, reuse, composting, or other waste management facilities administered under the SWIFR Program and for similar activities undertaken directly by EPA or financed in whole or in part through Federal funding opportunities. EPA will consider each proposal for the installation or relocation and operation of machinery and equipment to ensure that uses of the installed or relocated machinery and equipment are consistent with the general mission of the receiving structure. For proposals requiring modifications to an existing building, within or contiguous to a previously disturbed or developed area,

[1] Modified from 10 CFR part 1021 subpart D, app. B to reflect EPA as the adopting agency.

that are necessary for the equipment installation and relocation, EPA will review each proposal to ensure that such modifications are within the scope of the CE and would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts.

III. Consideration of Extraordinary Circumstances

When applying these CEs, EPA will evaluate the proposed action to ensure consideration of the integral elements listed above. In addition, in considering extraordinary circumstances, EPA will consider whether the proposed action has the potential to result in significant effects as described in DOE's extraordinary circumstances listed at 10 CFR 1021.410(b)(2). DOE defines extraordinary circumstances as unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources. In addition, EPA will consider its list of extraordinary circumstances as described at 40 CFR 6.204(b).

IV. Consultation With DOE and Determination of Appropriateness

EPA and DOE consulted on the appropriateness of EPA's adoption of the CEs in December 2023. EPA and DOE's consultation included a review of DOE's experience developing and applying the CEs, as well as the types of actions for which EPA plans to utilize the CEs. These EPA actions are very similar to the type of projects for which DOE has applied the CEs and therefore the effects of EPA projects will be very similar to the effects of DOE projects, which are not significant, absent extraordinary circumstances. Therefore, EPA has determined that its proposed use of the CE for the Drop-off, Collection, and Transfer Facilities for Recyclable Materials and the CE for Installation or Relocation of Machinery and Equipment as described in this notice are appropriate.

V. Notice to the Public and Documentation of Adoption

This notice serves to identify to the public and document EPA's adoption of DOE's CEs for B1.35 Drop-off, Collection, and Transfer Facilities for Recyclable Materials and for B1.31 Installation or Relocation of Machinery and Equipment. This notice identifies the types of actions to which EPA will apply the CEs, as well as the considerations that EPA will use in determining whether an action is within the scope of the CEs.

Dated: March 18, 2024.

Elizabeth Shaw,

Director, Resource Conservation and Sustainability Division, Office of Resource Conservation and Recovery, Office of Land and Emergency Management.

[FR Doc. 2024–06051 Filed 3–21–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11826–01–OW]

Notice of Public Meeting of the Environmental Financial Advisory Board (EFAB) With Webcast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) announces a public meeting with a webcast of the Environmental Financial Advisory Board (EFAB). The meeting will be shared in real-time via webcast and public comments may be provided in writing in advance or virtually via webcast. Please see **SUPPLEMENTARY INFORMATION** for further details. The purpose of the meeting will be for the EFAB to discuss current advisory charges, provide updates on previous EFAB deliverables, and to learn more about the Administration's infrastructure investment opportunities. The meeting will be conducted in a hybrid format of in-person and virtual via webcast.

DATES: The meeting will be held on:

1. April 10, 2024, from 9 a.m. to 12 p.m. Eastern Time;
2. April 11, 2024, from 9 a.m. to 4 p.m. Eastern Time; and
3. April 12, 2024, from 9 a.m. to 12 p.m. Eastern Time.

ADDRESSES:

In-Person: Residence Inn by Marriott Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Webcast: Information to access the webcast will be provided upon registration in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants information about the meeting may contact Tara Johnson via telephone/voicemail at (202) 809–7368 or email to *efab@epa.gov.* General information concerning the EFAB is available at *www.epa.gov/waterfinancecenter/efab.*

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, to provide advice and recommendations to EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a public meeting with a webcast for the following purposes:

(1) Discuss potential future EFAB charges;

(2) Provide updates on recent EFAB deliverables; and

(3) Learn more about the Administration's infrastructure investment opportunities.

Registration for the Meeting: To register for the meeting, please visit *www.epa.gov/waterfinancecenter/efab#meeting.* Interested persons who wish to attend the meeting must register by April 3, 2024, to attend in person or by April 8, 2024, to attend via webcast. Pre-registration is strongly encouraged. In the event the meeting cannot be held, an announcement will be made on the EFAB website at *www.epa.gov/waterfinancecenter/efab* and all registered attendees will be notified.

Availability of Meeting Materials: Meeting materials, including the meeting agenda and briefing materials, will be available on EPA's website at *www.epa.gov/waterfinancecenter/efab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees 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 provide independent advice to EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to EPA.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to three minutes each. Persons interested in providing oral statements at the April 2024 meeting should register in advance and provide notification, as noted in the registration confirmation, by April 3, 2024, to be placed on the list of registered speakers.

Written Statements: Written statements should be received by April

3, 2024, so that the information can be made available to the EFAB for its consideration prior to the meeting. Written statements should be sent via email to *efab@epa.gov.* Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB 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 or to request accommodations for a disability, please register for the meeting and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the meeting to allow as much time as possible to process your request.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2024–06109 Filed 3–21–24; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activity: Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed collection; comment request.

SUMMARY: This notice announces the intention of the U.S. Equal Employment Opportunity Commission (EEOC) to request a three-year approval, under the Paperwork Reduction Act of 1995 (PRA), of a revision to the current Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery that the Office of Management and Budget (OMB) previously approved. This collection is part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery.

DATES: Written comments on this notice must be submitted on or before May 21, 2024.

ADDRESSES: You may submit comments using one of the following three methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions on the website for submitting comments.

Mail: Comments may be submitted by mail to Raymond Windmiller, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Fax: Comments totaling six or fewer pages can be sent by facsimile (''fax'') machine to 1–202–663–4114 (this is not a toll-free number). Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at 1–202–921–2815 (voice) or 1–800–669–6820 (TTY). These are not toll-free telephone numbers.

Instructions: All comments received must include the agency name and docket number. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

Copies of comments received in response to this notice also will be available for review at the Commission's library. Copies of comments will be made available for viewing by appointment only at 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

For Office of Communications and Legislative Affairs: Colleen Hampton Lyster, *colleen.hampton-lyster@eeoc.gov,* 1–202–921–2695.

For Office of Federal Operations: Sharon Halstead, *sharon.halstead@eeoc.gov,* 1–202–921–2832.

For Office of Field Programs: Katrina Grider, *katrina.grider@eeoc.gov,* 1–202–921–2919.

For Office of State, Local & Tribal Programs: James Yao, *james.yao@eeoc.gov,* 1–202–921–2886.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the government's commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, course materials, course instructor, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are the only way to collect information; there are no alternative existing sources;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature.

Pursuant to the PRA and OMB regulation 5 CFR 1320.8(d)(1), the EEOC solicits public comment on its intent to seek a three-year approval of this revised collection to enable it to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the EEOC's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the EEOC'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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In addition to clearance hours for the previously approved customer feedback forms, the EEOC is also requesting an additional 1,000 clearance hours as a reserve to cover any additional feedback forms that may be developed over the next three years for new trainings offered by the EEOC. The EEOC anticipates any new potential feedback forms will be similar in length and content to existing feedback forms. The EEOC plans to seek clearance for the additional hours so the EEOC can use the existing clearance number if the need arises for additional training and feedback forms.

Type of survey	Respondents	Number of respondents	Number of responses/ respondent	Participation time	Response burden (in hours)
Questionnaire: FEPA–TERO National Training Conference Survey.	Employees of state and local Fair Employment Practices Agencies (FEPAs) and Tribal Employment Rights Offices (TEROs).	550	1	3 minutes per response	27.5
Questionnaire: EXCEL Training Conference Evaluation Survey.	Private sector, state, and local government EEO managers, supervisors, practitioners, HR professionals, attorneys, ADR specialists and other interested parties.	310	1	10 minutes per response	52
Questionnaire: EEOC Training Institute Respectful Workplaces Course Evaluation.	Private sector and state and local government managers and employees.	5,000	1	5 minutes per response	417
Questionnaire: EEOC Training Institute Course Evaluation.	Private sector human resources staff, business owners, managers, and supervisors, and state and local government employees.	6,000	1	2 minutes per response	200
Questionnaire: EEO In-Person Workshop Evaluation Survey.	Private sector and state and local government human resources staff, business owners, managers, supervisors, employment agency staff, union officials, attorneys, and others interested in EEO issues.	2,170	1	2 minutes per response	72
Questionnaire: EEO Virtual Workshop Evaluation Survey.	Private sector and state and local government human resources staff, business owners, managers, supervisors, employment agency staff, union officials, attorneys, and anyone else interested in EEO issues.	2,170	1	2 minutes per response	72
Questionnaire: National External Engagement Program Survey.	Attendees at Outreach and Training educational events.	2,500	1	5 minutes per response	208
Questionnaire: Federal Course and Customer Specific Training Feedback Survey.	Non-federal learners in federal courses and customized customer-specific training.	225	1	2 minutes per response	7.5
Questionnaire: Federal Education Consortium Registration.	Non-federal Education Consortium registrants.	50	1	2 minutes per response	2.0
Questionnaire: Request for Federal Training and Outreach services.	Non-federal entities requesting outreach or fee-based training.	20	1	2 minutes per response	<1
EEOC Website Satisfaction Survey	Individuals or Households	3,270	1	2 minutes per response	109
Future Training Assessments	Future Training Attendees	1,000	1	5 minutes per response	83
Total	.....	23,265	.....	.....	1,250

Overview of Information Collection

OMB Number: 3046–0048.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and Households; Businesses and

Organizations; State, Local or Tribal Governments.

Average Expected Annual Number of Activities: Approximately 12 activities.

Respondents: 23,265.

Annual Responses: 23,265.

Frequency of Response: Once per respondent.

Average Minutes per Response: 3.2.

Annual Burden Hours: 1,250.

Dated: March 18, 2024.

For the Commission.

Charlotte A. Burrows,

Chair.

[FR Doc. 2024–06082 Filed 3–21–24; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 27, 2024, at 10 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th Floor) and virtual.

Note: For those attending the meeting in person, current Covid–19 safety protocols for visitors, which are based on the CDC Covid–19 hospital admission level in Washington, DC, will be updated on the commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/*. If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the Covid–19 hospital admission level and corresponding health and safety procedures. To access the meeting virtually, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2024–03:

PoliticalMeetings.com LLC

REG 2024–01 (Candidate Security)—

Draft Notice of Proposed Rulemaking

Management and Administrative Matters

Additional Information: This meeting will be cancelled if the Commission is not open due to a funding lapse.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040 or *secretary@fec.gov,* at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–06247 Filed 3–20–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Wednesday, April 17, 2024.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Morton Salt, Inc.,* Docket No. CENT 2023–0120. (Issues include whether the Commission has authority to review the Secretary's decision to issue a notice of pattern of violations.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson, (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Phone Number for Listening to Meeting: 1 (866) 236–7472.

Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: March 19, 2024.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2024–06192 Filed 3–20–24; 11:15 am]

BILLING CODE 6735–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–22–002, NIOSH Centers for Agricultural Safety and Health; Cancellation of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Marilyn Ridenour, B.S.N., M.P.H., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone: (304) 285–5879; email: *MRidenour@cdc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–22–002, NIOSH Centers for Agricultural Safety and Health; March 14, 2024, 1 p.m.–5 p.m., EDT, video-assisted meeting, in the original **Federal Register** notice. The meeting notice was published in the **Federal Register** on November 27, 2023, 88 FR 82901.

This meeting is being canceled in its entirety.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–06056 Filed 3–21–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP24–009, Arthritis Management and Wellbeing Network (AMWN); Corrected Notice of Closed Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Natalie Brown, M.P.H., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control

and Prevention, 4770 Buford Highway, Mailstop S106–3, Atlanta, Georgia 30341–3717. Telephone: (404) 639–4601; email: *NBrown3@cdc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP24–009, Arthritis Management and Wellbeing Network (AMWN); May 15, 2024, 10 a.m.–6 p.m., EDT, teleconference/web conference, in the original **Federal Register** notice. The meeting notice was published in the **Federal Register** on February 13, 2024, 89 FR 10080.

This meeting notice is being corrected to change the Notice of Funding Opportunity (NOFO) title and should read as follows:

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP24–009, Arthritis Management and Wellbeing Research Network (AMWRN).

The meeting is closed to the public.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–06058 Filed 3–21–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–24DU; Docket No. CDC–2024–0021]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Generic Clearance for the Collection of Minimal Data Necessary for Case Data During an Emergency Response. This information collection will allow CDC to collect the minimum data necessary for confirmed, probable, and suspected cases of any disease or condition that is the subject of an emergency response.

DATES: CDC must receive written comments on or before May 21, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0021 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Generic Clearance for the Collection of Minimal Data Necessary for Case Data During an Emergency Response—New—Office of Public Health Data, Surveillance, and Technology (OPHDST), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

During a public health emergency response, state, tribal, local, and territorial (STLT) health departments and CDC need to exchange data on confirmed, probable, and suspected cases rapidly. Timely notifications of cases from STLT to CDC are critical to provide situational awareness at the federal level to support decision making, particularly for public health threats that escalate quickly and cross jurisdictions. To this end, collecting the minimum data necessary will provide standardization and consistency among technical approaches and Agency-wide processes. The harmonization across CDC programs and STLTs will reduce the burden on STLTs and healthcare providers from ad hoc requests for case data from CDC programs.

Section 319D of the Public Health Service Act (as amended Through Pub. L. 118–35, enacted January 19, 2024) states that CDC shall define the minimum data necessary as the Agency collaborates with STLTs and other partners to improve the appropriate near real-time electronic transmission of interoperable public health data for situational awareness and response to public health emergencies. In addition, the CDC Advisory Committee to the

Director (ACD) recommends that CDC should establish the minimum data necessary for core data sources including case data to be transmitted to CDC from STLTs.

CDC requests a three-year approval for a New Generic Information Collection Request (ICR), for the Collection of Minimal Data Necessary for Case Data During an Emergency Response. This new ICR includes a request for approval for CDC to collect the minimum data necessary for confirmed, probable, and suspected cases of any disease or condition that is the subject of an emergency response. Data may be sent to CDC by STLT health departments through the National Notifiable Diseases Surveillance System (NNDSS), Data Collation and Integration for Public Health Event Response (DCIPHER), or other automated or non-automated mechanisms including but not limited to fax, email, secure file upload, and data entry to a secure website.

Data will be used for ongoing situational awareness and to monitor the occurrence and spread of the disease or condition. Other uses may include identifying populations or geographic areas at high risk; planning prevention and control programs and policies; and allocating resources appropriately. The data may also be used by CDC to obtain travel histories and other information to describe and manage outbreaks and conduct public health follow-up to minimize the spread of disease.

The burden estimates include the time that states, territories, freely associated states, and cities will incur to submit confirmed, probable, and suspected case data for diseases or conditions that are the subject of an emergency response. The estimated annual burden for the 60 respondents is 10,951 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
States	Submission of case data	50	365	30/60	9,125
Territories	Submission of case data	5	365	30/60	913
Freely Associated States	Submission of case data	3	365	30/60	548
Cities	Submission of case data	2	365	30/60	365
Total					10,951

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–06094 Filed 3–21–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–23HM]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Assessing Fatigue and Fatigue Management in U.S. Onshore Oil and Gas Extraction'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 21, 2023 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Assessing Fatigue and Fatigue Management in U.S. Onshore Oil and Gas Extraction—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Oil and gas extraction (OGE) workers play an important role in supporting the United States economy and help fulfill the energy needs of Americans and American businesses. OGE workers have significant risks for a variety of exposures at oil and gas well sites. There has been no significant fatigue research in the United States onshore upstream OGE sector. This proposed project will characterize relationships

between sleep, alertness, fatigue, fatigue management, and related factors, within the onshore OGE industry.

Primary data will be collected using three approaches. First, researchers will collect direct measurements of sleep and alertness among OGE workers. Second, researchers will use questionnaires to collect information on OGE worker demographics, occupation, general heath, normal working hours, commute times, physical sleeping environment, and typical sleep quality. Third, researchers will collect qualitative information through interviews with workers, front-line supervisors, health and safety leaders, as well as subject matter experts, to understand challenges and opportunities related to fatigue management in OGE. Actigraphy watches will collect data passively and will not require participant effort except for training and fitting of the watch.

Data collected will be used to guide the development of targeted interventions, training, and educational materials. CDC requests OMB approval for an estimated 404 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Land-based OGE workers	Baseline Questionnaire	80	1	15/60
Land-based OGE workers	Daily Pre-Shift Questionnaires	80	14	3/60
Land-based OGE workers	Daily Post-Shift Questionnaires	80	14	3/60
Land-based OGE workers	Psychomotor Vigilance Test (PVT)—no form	80	28	5/60
Land-based OGE workers	Actigraphy	80	1	15/60
Land-based OGE workers	Worker Interview Guide	30	1	1.5
Field-level Supervisors	Manager Interview Guide	10	1	1
Health and Safety Leaders	HSE Interview Guide	7	1	1
Subject Matter Experts	SME Interview Guide	3	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–06093 Filed 3–21–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–1348; Docket No. CDC–2024–0020]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled The National Firefighter Registry (NFR) for Cancer. In accordance with the Firefighter Cancer Registry Act of 2018, the NFR will maintain a voluntary registry of firefighters to collect relevant health and occupational information of such firefighters for purposes of determining cancer incidence.

DATES: CDC must receive written comments on or before May 21, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0020 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

The National Firefighter Registry (NFR) for Cancer (OMB Control No. 0920–1348, Exp. 9/30/2024)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In order to accurately monitor trends in cancer incidence and evaluate control measures among the U.S. fire service, Congress passed the Firefighter Cancer Registry Act of 2018. Under this legislation, CDC/NIOSH was directed to create a registry of U.S. firefighters for the purpose of monitoring cancer incidence and risk factors among the current U.S. fire service. Funding for the project was authorized through this legislation for five years as of fiscal year 2019.

According to the Firefighter Cancer Registry Act of 2018, the main goal of the National Firefighter Registry (NFR) for Cancer is to develop and maintain . . . a voluntary registry of firefighters to collect relevant health and occupational information of such firefighters for purposes of determining cancer incidence. Results from the NFR will provide information for decision makers within the fire service and medical or public health community to devise and implement policies and procedures to lessen cancer risk and/or improve early detection of cancer among firefighters. Revisions to this collection include an update of the estimated annualized time burden and occupational wage information to reflect current earnings based on the U.S. Bureau of Labor Statistics for 2022 and a more accurate number of respondents based on the first year of project enrollment. Additionally, minor updates to the enrollment questionnaire were made to improve readability and the overall user experience.

The below table outlines the estimated time burden for participants enrolling in the NFR. There are three corresponding documents to be completed as part of the enrollment process; the Informed Consent, User Profile, and Enrollment Questionnaire. The estimated time burden for the Informed Consent and User Profile are five minutes each, and an estimated twenty-minute burden for enrollment questionnaire. CDC requests OMB approval for an estimated 17,221 burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
U.S. Firefighters	Informed Consent	33,333	1	5/60	2,783
U.S. Firefighters	NFR User Profile (web-portal registration)	33,333	1	5/60	2,783
U.S. Firefighters	NFR Enrollment Questionnaire	33,333	1	20/60	11,111
U.S. Firefighters	Records request	34	1	960/60	544
Total					17,221

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–06095 Filed 3–21–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS 3452–FN]

Medicare Program; Application by the Utilization Review Accreditation Commission (URAC) for Continued CMS Approval of Its Home Infusion Therapy (HIT) Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Utilization Review Accreditation Commission (URAC) for continued recognition as a national accrediting organization that accredits suppliers of home infusion therapy (HIT) services that wish to participate in the Medicare or Medicaid programs.

DATES: The approval announced in this final notice is effective March 27, 2024 through March 27, 2030.

FOR FURTHER INFORMATION CONTACT: Shannon Freeland, (410) 786–4348.

SUPPLEMENTARY INFORMATION:

I. Background

Home infusion therapy (HIT) is a treatment option for Medicare beneficiaries with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act (Pub. L. 114–255, enacted December 13, 2016) added section 1861(iii) to the Social Security Act (the Act), establishing a new Medicare benefit for HIT services. Section 1861(iii)(1) of the Act defines ''home infusion therapy'' as professional services, including nursing services; training and education not otherwise covered under the Durable Medical Equipment (DME) benefit; remote monitoring; and other monitoring services. Home infusion therapy must be furnished by a qualified HIT supplier and furnished in the individual's home. Sections 1861(iii)(A) and (B) of the Act require that the individual (patient) must:

- Be under the care of an applicable provider (that is, physician, nurse practitioner, or physician assistant); and
- Have a plan of care established and periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under Part B, which prescribes the type, amount, and duration of infusion therapy services that are to be furnished.

Section 1861(iii)(3)(D)(i)(III) of the Act requires that a qualified HIT supplier be accredited by an accrediting organization (AO) designated by the Secretary in accordance with section 1834(u)(5) of the Act.

Section 1834(u)(5)(A) of the Act identifies factors for designating HIT AOs and in reviewing and modifying the list of designated HIT AOs. These statutory factors are as follows:

- The ability of the accrediting organization to conduct timely reviews of HIT accreditation applications.

• The ability of the accrediting organization to take into account the capacities of HIT suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).

• Whether the accrediting organization has established reasonable fees to be charged to HIT suppliers applying for accreditation.

• Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit HIT suppliers furnishing HIT no later than January 1, 2021. Section 1861(iii)(3)(D)(i)(III) of the Act requires a ''qualified home infusion therapy supplier'' to be accredited by a CMS-approved AO, pursuant to section 1834(u)(5) of the Act.

The Utilization Review Accreditation Commission's (URAC's) current term of approval for their Home Infusion Therapy accreditation program expires March 27, 2024.

II. Approval of Deeming Organization

Section 1834(u)(5) of the Act and regulations at 42 CFR 488.1010 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Our rules at 42 CFR 488.1020(a) require that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. Pursuant to our rules at 42 CFR 488.1010(d), we have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

III. Provisions of the Proposed Notice

In the November 9, 2023 **Federal Register** (88 FR 77321), we published a proposed notice announcing the URAC's request for continued recognition as a national accrediting organization for suppliers providing home infusion therapy (HIT) services that wish to participate in the Medicare or Medicaid programs. In that proposed notice, we detailed our evaluation criteria. Under section 1834(u)(5) of the Act and in our regulations at 42 CFR 488.1010, we conducted a review of URAC's Medicare HIT accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to, the following:

• An administrative review of URAC's:

++ Corporate policies;

++ Financial and human resources available to accomplish the proposed surveys;

++ Procedures for training, monitoring, and evaluation of its HIT surveyors;

++ Ability to investigate and respond appropriately to complaints against accredited HITs; and

++ Survey review and decision-making process for accreditation.

• The equivalency of URAC's standards for HIT as compared with CMS' HIT conditions for participation.

• URAC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training;

++ The comparability of URAC's to CMS' standards and processes, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities;

++ URAC's processes and procedures for monitoring a HIT supplier found out of compliance with URAC's program requirements;

++ URAC's capacity to report deficiencies to the surveyed HIT facilities and respond to the facility's evidence of standards compliance in a timely manner;

++ URAC's capacity to provide CMS with electronic data and reports necessary for effective assessment and interpretation of the organization's survey process;

++ URAC's capacity to adequately fund required surveys;

++ URAC's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced; and

++ URAC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans or URAC's evidence of standards compliance).

• The adequacy of URAC's staff and other resources, and its financial viability.

• URAC's agreement or policies for voluntary and involuntary termination of suppliers.

• URAC's agreement or policies for voluntary and involuntary termination of the HIT AO program.

IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with section 1834(u)(5) of the Act, the November 9, 2023, proposed notice also solicited public comments regarding whether URAC's requirements met or exceeded the Medicare conditions for participation for HIT. No comments were received in response to our proposed notice.

V. Provisions of the Final Notice

A. Differences Between URAC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared URAC's HIT accreditation requirements and survey process with the Medicare Conditions for Coverage of 42 CFR part 486, and the survey and certification process requirements of part 488. Our review and evaluation of URAC's HIT application, which were conducted as described in section III. of this final notice, yielded the following areas where, as of the date of this notice, URAC has completed revising its standards and certification processes to meet the conditions at §§ 486.500 to 486.525.

• Section 486.520(a), to address the requirement of all patients must be under the care of an applicable provider.

• Section 486.520(b), to address the requirement that the plan of care must be established by a physician prescribing the type, amount, and duration for HIT.

• Section 486.520(c), to address the requirement that the plan of care must be periodically reviewed by the physician.

• Section 486.525(a), to address the requirement that the HIT suppliers to be available 7 days a week, 24 hours a day basis in accordance with the plan of care.

• Section 486.525(a)(1), to provide professional services, including nursing services.

• Section 486.525(a)(2), to address the requirement for patient education and training to be available for patients on a 7 day a week, 24 hour a day basis in accordance with the plan of care.

• Section 486.525(a)(3), to address the requirement of remote monitoring for the provision of HIT and home infusion drugs.

• Section 486.525(b), to address the requirement of all home infusion therapy suppliers must provide home

infusion therapy services in accordance with nationally recognized standards of practice, and in accordance with all applicable State and Federal laws and regulations.

B. Term of Approval

Based on the review and observations described in section III. of this final notice, we have determined that URAC's requirements for HITs meet or exceed our requirements. Therefore, we approve URAC as a national accreditation organization for HITs that request participation in the Medicare program, effective March 27, 2024 through March 27, 2030.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Trenesha Fultz-Mimms,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–06144 Filed 3–21–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; Interstate Administrative Subpoena and Notice of Lien (Office of Management and Budget OMB #: 0970–0152)

AGENCY: Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension with proposed revisions to the Interstate Administrative Subpoena and Notice of Lien forms (Office of Management and Budget #0970–0152, expiration 6/30/2024). The forms are updated to reflect the name change of the Federal child support program office from the Office of Child Support Enforcement to the Office of Child Support Services.

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: The Administrative Subpoena is used by State child support agencies to obtain income and other financial information regarding noncustodial parents for purposes of establishing, enforcing, and modifying child support orders. The Notice of Lien imposes liens in cases with overdue support and allows a State child support agency to file liens across State lines, when it is more efficient than involving the other State's IV–D agency.

Section 452(a)(11) of the Social Security Act requires the Secretary of the Department of Health and Human Services to promulgate forms for administrative subpoenas and imposition of liens used by State child support agencies in interstate cases. Section 454(9)(E) of the Social Security Act requires each State to cooperate with any other State in using the Federal forms for issuance of administrative subpoenas and imposition of liens in interstate child support cases.

Respondents: State, local, or Tribal agencies administering a child support program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Administrative Subpoena	54	462	.5	12,474
Notice of Lien	54	29,762	.5	803,574

Estimated Total Annual Burden Hours: 816,048.

Authority: 42 U.S.C. 652; 42 U.S.C. 654.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–06143 Filed 3–21–24; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2343]

Hazard Analysis and Risk-Based Preventive Controls for Human Food; Draft Guidance for Industry; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA, we, or the Agency) is extending the comment period for two chapters of a multichapter draft guidance entitled ''Hazard Analysis and Risk-Based Preventive Controls for Human Food: Draft Guidance for Industry,'' which were announced in the **Federal Register** of September 27, 2023. The relevant draft chapters are entitled ''Chapter 11—

Food Allergen Program'' and ''Chapter 16—Acidified Foods.'' We are taking this action in response to a request for an extension to allow interested persons additional time to submit comments before FDA begins work on the final guidance.

DATES: FDA is extending the comment period on our draft guidance published September 27, 2023 (88 FR 66457). Submit either electronic or written comments by May 24, 2024, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final 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–2016–D–2343 for ''Hazard Analysis and Risk-Based Preventive Controls for Human Food: Draft Guidance for Industry.'' 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.'' We will review this copy, including the claimed confidential information, in our 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)).

FOR FURTHER INFORMATION CONTACT: Linda Kahl, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2784.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 27, 2023 (88 FR 66457), we published a notice announcing the availability of two chapters of a multichapter draft guidance entitled ''Hazard Analysis and Risk-Based Preventive Controls for Human Food.'' These draft chapters are entitled ''Chapter 11—Food Allergen Program'' and ''Chapter 16—Acidified Foods.'' The notice of availability opened a docket with a 180-day comment period, to close on March 25, 2024.

We have received a request to extend the comment period for the two draft guidance chapters. The request conveys that additional time would be helpful for stakeholders to fully evaluate the chapters and develop meaningful comments. We have considered the request and have concluded that an extension of the comment period by 60 days, until May 24, 2024, is appropriate. We believe that the extension will allow adequate time for interested persons to submit comments without significantly delaying the final guidance.

Dated: March 19, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–06118 Filed 3–21–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National

Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08W–25A, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on February 1, 2024, through February 29, 2024. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08W–25A, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Dominic Roberti, Los Angeles, California, Court of Federal Claims No: 24–0165V
2. Kevin Rowell, Boston, Massachusetts, Court of Federal Claims No: 24–0167V
3. Teresa Porter, Santa Rosa, California, Court of Federal Claims No: 24–0168V
4. Linda Andrade, Corpus Christi, Texas, Court of Federal Claims No: 24–0169V
5. Frank Lopes, Boston, Massachusetts, Court of Federal Claims No: 24–0170V
6. Lynda Louviere, New Iberia, Louisiana, Court of Federal Claims No: 24–0171V
7. Timothy Varn, Marietta, Georgia, Court of Federal Claims No: 24–0173V
8. Jason Schloop and Trista Schloop on behalf of A.G.S., Holly Springs, North Carolina, Court of Federal Claims No: 24–0174V
9. Jason Bembry, Rochester, New York, Court of Federal Claims No: 24–0178V
10. Shawn Dykes, Salisbury, Maryland, Court of Federal Claims No: 24–0179V
11. Juan P. Cruz, Boscobel, Wisconsin, Court of Federal Claims No: 24–0180V
12. Christopher T. Jackson, Boscobel, Wisconsin, Court of Federal Claims No: 24–0181V
13. Jessica Berger, Boston, Massachusetts, Court of Federal Claims No: 24–0182V
14. Sarah Soper, Monroe, Wisconsin, Court of Federal Claims No: 24–0184V
15. Jennifer Kistler, Phoenixville, Pennsylvania, Court of Federal Claims No: 24–0186V
16. Jeffrey Pack, Philadelphia, Pennsylvania, Court of Federal Claims No: 24–0187V
17. Lisa D. DeCarolis, Atlanta, Georgia, Court of Federal Claims No: 24–0188V
18. Kristine Hare, Andover, Minnesota, Court of Federal Claims No: 24–0189V
19. Bert Barclay, Orlando, Florida, Court of Federal Claims No: 24–0192V
20. Adam Meduski, Towson, Maryland, Court of Federal Claims No: 24–0193V
21. William Brimmer, II, Sand Springs, Oklahoma, Court of Federal Claims No: 24–0194V
22. Cynthia Lee, Statesboro, Georgia, Court of Federal Claims No: 24–0195V
23. Houston Byrd, Jr., Newark, Ohio, Court of Federal Claims No: 24–0196V
24. Luis Torres-Pereyra, Los Angeles, California, Court of Federal Claims No: 24–0198V
25. Tapan Roy, Livermore, California, Court of Federal Claims No: 24–0200V
26. Barbara Miles, McKees Rocks, Pennsylvania, Court of Federal Claims No: 24–0203V
27. Jeffrey Carpenter, St. Petersburg, Florida, Court of Federal Claims No: 24–0204V
28. Barbara Campbell, Hardeeville, South Carolina, Court of Federal Claims No: 24–0205V
29. Shirley Ragland, Milwaukee, Wisconsin, Court of Federal Claims No: 24–0206V
30. Robert Ahern, Hickory, North Carolina, Court of Federal Claims No: 24–0208V
31. Jamiera Boone, Los Angeles, California, Court of Federal Claims No: 24–0210V
32. Leah Montevideo, Orlando, Florida, Court of Federal Claims No: 24–0211V
33. Erin Michael, Maple Grove, Minnesota, Court of Federal Claims No: 24–0212V
34. Barbara Brumfield on behalf of Patrick Brumfield, Deceased, Peoria, Arizona, Court of Federal Claims No: 24–0213V
35. Chase Boruch, Waupun, Wisconsin, Court of Federal Claims No: 24–0217V
36. Jennifer L. Walston, Medford, Oregon, Court of Federal Claims No: 24–0218V
37. Melvin Stringfield, Decatur, Georgia, Court of Federal Claims No: 24–0220V
38. Rebecca Rauenbuehler, Mount Pleasant, Iowa, Court of Federal Claims No: 24–0221V
39. Pairlee Vicente, Roseville, California, Court of Federal Claims No: 24–0223V
40. Marlene Civis, Wake Forest, North Carolina, Court of Federal Claims No: 24–0224V
41. Joseph Keaton, Huntington, West Virginia, Court of Federal Claims No: 24–0225V

42. Janet Lotherington, Sarasota, Florida, Court of Federal Claims No: 24–0226V
43. Thomas Lindewirth, Wentzville, Pennsylvania, Court of Federal Claims No: 24–0227V
44. Stella Borou, Fairfax, Virginia, Court of Federal Claims No: 24–0228V
45. Nahed Refaat, Holmdel, New Jersey, Court of Federal Claims No: 24–0229V
46. Roseann West, Washington, Pennsylvania, Court of Federal Claims No: 24–0231V
47. Deanna Cuccia, Monroe, New York, Court of Federal Claims No: 24–0233V
48. Thomas Dewing, Kentland, Indiana, Court of Federal Claims No: 24–0235V
49. Yolanda Walker, Spokane, Washington, Court of Federal Claims No: 24–0238V
50. Megan Berthiaume, Keene, New Hampshire, Court of Federal Claims No: 24–0240V
51. Shelby McDonough on behalf of L.M., Boston, Massachusetts, Court of Federal Claims No: 24–0243V
52. Richard Urias, Sacramento, California, Court of Federal Claims No: 24–0244V
53. Reggie Allen, Boscobel, Wisconsin, Court of Federal Claims No: 24–0246V
54. Jennifer A. Raymer, Fort Worth, Texas, Court of Federal Claims No: 24–0247V
55. Michaela Avila on behalf of B.A., Chico, California, Court of Federal Claims No: 24–0249V
56. Heather Coggins, Los Angeles, California, Court of Federal Claims No: 24–0250V
57. Lauren Killian, Chicago, Illinois, Court of Federal Claims No: 24–0251V
58. Brian Posner, Melbourne, Florida, Court of Federal Claims No: 24–0253V
59. Emma Lee Martin, Billings, Montana, Court of Federal Claims No: 24–0254V
60. Jeanne Richard, Herkimer, New York, Court of Federal Claims No: 24–0255V
61. Efrain Muentes-Marquez, San Jose, California, Court of Federal Claims No: 24–0260V
62. Matthew Raymer, Fort Worth, Texas, Court of Federal Claims No: 24–0261V
63. Alina Hall, Los Angeles, California, Court of Federal Claims No: 24–0263V
64. Erica Iglesias, Richmond, Virginia, Court of Federal Claims No: 24–0264V
65. Matthew Mills, Arlington Heights, Illinois, Court of Federal Claims No: 24–0265V
66. Amber Scott, Temecula, California, Court of Federal Claims No: 24–0266V
67. Daniel Swinton, Pennsauken, New Jersey, Court of Federal Claims No: 24–0267V
68. Autumn Hobson, Alabaster, Alabama, Court of Federal Claims No: 24–0268V
69. Diane Lucash, Belleville, Illinois, Court of Federal Claims No: 24–0269V
70. Marge Lilienthal, Stamford, Connecticut, Court of Federal Claims No: 24–0270V
71. Marvin Kevin Wagner, Sr., Sioux City, Iowa, Court of Federal Claims No: 24–0272V
72. Ashley Klein on behalf of C.K., Naples, Florida, Court of Federal Claims No: 24–0274V
73. George D. Taylor, Milwaukee, Wisconsin, Court of Federal Claims No: 24–0275V
74. Ashley Klein on behalf of R.K., Naples, Florida, Court of Federal Claims No: 24–0276V
75. Richard Lundgren, Collierville, Tennessee, Court of Federal Claims No: 24–0277V
76. Lavall T. Lee, New Lisbon, Wisconsin, Court of Federal Claims No: 24–0278V
77. Natalie Diaz on behalf of A.S., South Orange, New Jersey, Court of Federal Claims No: 24–0279V
78. Krista Reed Choate, Los Angeles, California, Court of Federal Claims No: 24–0280V
79. Monique Padfield, Los Angeles, California, Court of Federal Claims No: 24–0281V
80. Carlo Manuel Juncal, III on behalf of Jennifer Juncal, Deceased, Lakeland, Florida, Court of Federal Claims No: 24–0282V
81. Suzanne Broughton, Wallingford, Connecticut, Court of Federal Claims No: 24–0284V
82. David Hardy, Salt Lake City, Utah, Court of Federal Claims No: 24–0286V
83. Danielle Dolan on behalf of J.D., Chicago, Illinois, Court of Federal Claims No: 24–0289V
84. Epiphanie Musabyemariya, Wappingers Falls, New York, Court of Federal Claims No: 24–0291V
85. Ryan King, Plano, Texas, Court of Federal Claims No: 24–0292V
86. Charles Middleton, Grand Terrace, California, Court of Federal Claims No: 24–0295V
87. Richard Aochi, Riverside, California, Court of Federal Claims No: 24–0296V
88. Jennifer Gastelum, Tacoma, Washington, Court of Federal Claims No: 24–0297V
89. Lorna Munson, Dallas, Texas, Court of Federal Claims No: 24–0298V
90. Ann Kaiser, Carmel, Indiana, Court of Federal Claims No: 24–0299V
91. Melanie Jordan, Washington, District of Columbia, Court of Federal Claims No: 24–0300V
92. Lindsay Fox on behalf of I.M., Plaquemine, Louisiana, Court of Federal Claims No: 24–0302V
93. Fannie Nealy, Fort Pierce, Florida, Court of Federal Claims No: 24–0309V
94. Gregory Rafferty, Milpitas, California, Court of Federal Claims No: 24–0310V
95. Katherine Doyle, Boston, Massachusetts, Court of Federal Claims No: 24–0314V
96. Tina Sylva, Kissimmee, Florida, Court of Federal Claims No: 24–0316V
97. Julia A. Snider, Chicago, Illinois, Court of Federal Claims No: 24–0317V
98. Joshua T. Greeley, Richmond, Virginia, Court of Federal Claims No: 24–0319V
99. Samantha Schneider, Grand Rapids, Michigan, Court of Federal Claims No: 24–0321V
100. Miriam McCleese, Kissimmee, Florida, Court of Federal Claims No: 24–0322V

[FR Doc. 2024–06115 Filed 3–21–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Applications for and Monitoring of New, One-Time Funding Programs Administered by the Health Resources and Services Administration, OMB Control No. 0906–XXXX—New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) concerning a proposed authorization to conduct the generic solution for solicitation for awards for HRSA-funded programs that provide one-time funding, including pilot programs. Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than May 21, 2024.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Applications for and Monitoring of New, One-Time Funding Programs Administered by the Health Resources and Services Administration (HRSA)—OMB Control No. 0906–xxxx—New.

Abstract: HRSA is seeking approval for a generic umbrella clearance to collect applications for awards for HRSA-funded programs that provide one-time funding, including pilot programs. Should any of these pilot

programs become permanent, HRSA will seek OMB clearance for these programs using a mechanism outside of this generic umbrella clearance. OMB guidance allows for the use of generic packages in cases where there may be a need for a data collection, but the agency ''cannot determine the details of the specific individual collections until a later time.'' [1] HRSA will only use this collection for HRSA-funded programs that provide one-time funding, including pilot programs. HRSA would only request OMB approval for collections under this generic umbrella collection if the collection is low-burden, uncontroversial, and is a one-time application.

Furthermore, if Congress appropriates additional funding for such a program or HRSA uses the information from the applications for policy decisions not related to funding awards, HRSA will prepare a standard information collection request for that program, which will include the required 60- and 30-day **Federal Register** notices.

Need and Proposed Use of the Information: HRSA seeks to use an umbrella generic clearance for HRSA-funded programs that provide one-time funding, including pilot programs, so that funding can be awarded expeditiously. Expeditious awarding of funding is helpful not only for administrative ease, but also for cases where a pilot program or a program receiving one-time funding has a statutory deadline for completion. Approval of this proposed generic umbrella collection would enable HRSA to collect information from individual and site applicants and enable HRSA to make selection determinations for one-time awards in a timely manner.

Information collections under this umbrella generic collection would be applications for funding (solely providing applicants with an opportunity to demonstrate their capabilities in accordance with HRSA's statement of work or selection criteria and other related information) and forms required for monitoring funding recipients. Following the award, the awardee may also be required to provide progress reports or additional documents.

Likely Respondents: Each fast-track ICR under this generic umbrella ICR will specify the specific manner that respondents will be enlisted. Respondents will vary by the specific program and are determined by each program's eligibility, to include but are not limited to the following: health providers and other paraprofessionals, health facilities, accredited health professions schools or programs, State and local governments, and other eligible entities.

Respondents will be recruited by means of information listed on HRSA's website, or advertisements in public venues. The privacy of any potential or actual respondents will be preserved to the extent requested by participants and as permitted by law.

Once applicants are selected and awards are made, these awardees will be respondents for monitoring collections such as progress reports.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

HRSA intends to use this generic umbrella ICR for applications with a low burden and monitoring awardees. To estimate the burden for this collection, HRSA estimated how much time it would take for a respondent to complete a 2-page application with typical fields used in current collections that may fall under this generic umbrella ICR. HRSA then calculated the average burden estimate from these ICRs for the purpose of the estimate for this ICR. To estimate the burden for monitoring funding recipients, HRSA estimated how much time it would take for funding recipients to complete the average 2-page form used for program monitoring. The total burden hours over a 3-year period estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED BURDEN HOURS OVER 3 YEARS

Instrument name	Estimated number of respondents	Average number of responses per respondent	Estimated total responses	Average burden per response (in hours)	Total burden hours
Program Applications	5,000	1.5	7,500	1.75	13,125
Program Monitoring	2,500	1.0	2,500	2.00	5,000
Total	7,500	.....	10,000	.....	18,125

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–06141 Filed 3–21–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, March

[1] Memorandum for the Heads of Executive Departments and Agencies and Independent Regulatory Agencies (July 2016), ''Flexibilities under the Paperwork Reduction Act for Compliance with Information Collection Requirements.'' Pages 4–5.

27, 2024, 10:30 a.m. to March 27, 2024, 12:30 p.m., National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on March 14, 2024, 89 FR 18652.

This meeting was amended to change the start date and end date from 03–27–2024 to 04–02–2024. The meeting is closed to the public.

Dated: March 18, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06127 Filed 3–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Adoptive T Cell Therapy Products Produced Using a Pharmacological p38 Mitogen-Activated Protein Kinase (MAPK) Inhibitor

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION** section of this Notice to Poolbeg Pharma (UK) Limited, incorporated in the United Kingdom.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before April 8, 2024 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D., Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240) 276–5484; Email: *andy.burke@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

1. United States Provisional Patent Application No. 62/570,708 filed October 11, 2017, entitled ''Methods of Producing T Cell Populations Using P38 MAPK Inhibitors'' [HHS Reference No. E–002–2018–0–US–01];

2. International Patent Application No. PCT/US2018/055206 filed October 10, 2018, entitled ''Methods of Producing T Cell Populations Using P38 MAPK Inhibitors'' [HHS Reference No. E–002–2018–0–PCT–02]; and

3. United States Patent Application No. 16/754,926 filed April 9, 2020, entitled ''Methods of Producing T Cell Populations Using P38 MAPK Inhibitors'' [HHS Reference No. E–002–2018–0–US–03].

The patent rights in these inventions have been assigned and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be the United States of America, and the field of use may be limited to the following:

''The treatment of cancer in humans using adoptive T cell therapy products produced through the use of a pharmacological p38 MAPK inhibitor.''

The E–002–2018 patent family is primarily directed to a method of producing populations of T cells for the treatment of cancer wherein the cells are cultured (*e.g.,* expanded) in the presence of a p38 mitogen-activated protein kinase (MAPK) inhibitor. In oncology, many investigational adoptive cell therapies rely on antigen-specific T cells isolated from the patient in need of treatment. However, these cells often exist in a terminally differentiated and exhausted state, or enter such a state following manipulation *ex vivo,* and are unable to mount a robust immune response following reinfusion. Recent evidence suggests that inhibition of P38 MAPK signaling in T cells during *ex vivo* expansion can ameliorate this performance defect. It is hoped that this modified cell manufacturing approach will enhance treatment efficacy. The exclusive field of use which may be granted to Poolbeg applies to only certain T cell manufacturing methods which rely on pharmacologic P38 MAPK inhibitors. Accordingly, the proposed scope of rights which may be conveyed under the license covers a portion of the possible applications of E–002–2018.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 19, 2024.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2024–06128 Filed 3–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Sciences.

Date: April 16, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology Member Application Review.

Date: April 17, 2024.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Aisha Lanette Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3527, *aisha.walker@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiac Sciences.

Date: April 18, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Virulence.

Date: April 18, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Bakary Drammeh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–P, Bethesda, MD 20892, (301) 435–0000, *drammehbs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Virulence.

Date: April 18, 2024.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Disease Control and Applied Immunology.

Date: April 19, 2024.

Time: 1:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Jian Wang, Ph.D., M.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 213–9853, *wangjia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 19, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06097 Filed 3–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Biotypes of CNS Complications in People Living with HIV (P01).

Date: April 17, 2024.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: March 18, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06061 Filed 3–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Miniaturization and Automation of Tissue Chip Systems (MATChS) applications received in response to RFA–TR–23–017 and RFA–TR–23–018.

Date: May 2, 2024.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Alumit Ishai, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, MSC 4874, Bethesda, MD 20892, (301) 496–9539, *alumit.ishai@nih.gov.*

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; NCATS CTSA Training Grants Review Meeting.

Date: May 21, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Nakia C. Brown, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, MSC 4874, Bethesda, MD 20892, (301) 827–3484, *brownnac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: March 19, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06113 Filed 3–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Small Grants (R03) Review.

Date: May 10, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Carol (Chang-Sook) Kim, Ph.D., Scientific Review Administrator, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, MSC 4874, Bethesda, MD 20892, (301) 402–1744, *carolko@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: March 19, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06114 Filed 3–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0231]

National Commercial Fishing Safety Advisory Committee; April 2024 Meetings

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meetings.

SUMMARY: The National Commercial Fishing Safety Advisory Committee (Committee) will conduct a series of meetings over three days to review, discuss, and make recommendations to the Secretary on matters relating to marine investigation cases and other relevant initiatives pertaining to commercial fishing vessels (CFVs). For more detailed information see section VII below.

DATES:

Meetings: The Committee will hold a meeting on Tuesday, April 9, 2023, from 8 a.m. until 5 p.m. eastern daylight time (EDT), Wednesday, April 10, 2023, from 8 a.m. until 5 p.m. EDT, and Thursday, April 11, 2024, from 8 a.m. until 5 p.m. EDT. The Committee meeting on Tuesday, April 9, 2024, from 9 a.m. to 10 a.m. EDT will be dedicated to an administrative meeting (Committee members only). Please note these meetings may close early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received before the meeting, please submit your written comments no later than April 2, 2024.

ADDRESSES: The meeting will be held at the Hampton Inn and Suites, 19 South 2nd Street Fernandina Beach, Florida 32034.

The National Commercial Fishing Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Mr. Jonathan Wendland at *Jonathan.G.Wendland@uscg.mil* or call at 202–372–1245 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meetings as time permits, but if you want your comment reviewed before the meetings, please submit your comments no later than April 2, 2023. We are particularly interested in comments regarding the topics in the ''Agenda'' section below. We encourage you to submit comments through Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0231 in the search box and click ''Search''. Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material using *https://www.regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2024–0231. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information provided. You may wish to review the Privacy and Security Notice found via link on the homepage of *https://www.regulations.gov.* For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Wendland, Alternate Designated Federal Officer (ADFO) of the National Commercial Fishing Safety Advisory Committee, telephone 202–372–1245 or *Jonathan.G.Wendland@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (Pub. L. 117–286, 5 U.S.C. ch. 10). The National Commercial Fishing Safety Advisory Committee is authorized by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* (Pub. L. 115–282, 132 Stat. 4190), and is codified in 46 U.S.C. 15102. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109.

The National Commercial Fishing Safety Advisory Committee provides advice and recommendations to the Secretary of Homeland Security through the Commandant of the U. S. Coast Guard, on matters relating to the safe operation of vessels including the matters of:

(A) navigation safety;

(B) safety equipment and procedures;

(C) marine insurance;

(D) vessel design, construction, maintenance, and operation; and

(E) personnel qualifications and training;

Additionally, the Committee will review regulations proposed under chapter 45 of title 46 of U.S Code (during preparation of the regulations) and review marine casualties and investigations of vessels covered by chapter 45 of title 46 U.S. Code and make recommendations to the Secretary to improve safety and reduce vessel casualties.

Agenda

Day 1

The agenda for the National Commercial Fishing Safety Advisory Committee is as follows:

I. Opening
- a. Call to Order/Designated Federal Officer (DFO) Remarks.
- b. Roll Call/Determination of Quorum.
- c. Swear in New Members (as applicable).
- d. U.S. Coast Guard Leadership Remarks.

II. Administration
- a. Review and Adoption of Meeting Agenda.
- b. Meeting Goals.
- c. Roberts Rules Simplified.

III. General Updates
- a. Old Business.
- b. New Business.

IV. Information Session
- a. Shipboard Communication Technologies: CG–672.
- b. Mariner Credentials: CG–MMC.
- c. Liferaft Service Intervals: CG–ENG.
- d. Marine Casualty Case Familiarization. CG–INV.

V. Public Comment period.

VI. Meeting Recess.

Day 2

VII. U.S. Coast Guard (USCG) Committee Tasking

a. Task Statement #11–23 (ongoing initiative from Fall 2023 NCFSAC meeting). Review and provide recommendations on the development of a publicly accessible website that contains all information related to fishing industry activities, including vessel safety, inspections enforcement, hazards, training, regulations (including proposed regulations), outages of the Rescue 21 system in Alaska and similar outages, and any other fishing-related activities.

b. *Task Statement #14–24:* Committee make recommendations on processes to assess, document, and maintain mariner competency to operate CFVs of less than 200 GRT, including local knowledge and recency.

c. *Task Statement #15–24:* Committee make recommendations regarding whether the USCG should explore obtaining legislative authority to require CFV operators of less than 200 GT hold a valid USCG issued Merchant Mariner's Credential (MMC), and additional measures to require crewmembers on CFVs hold crew competency certificates or Merchant Mariner's Document.

d. *Task Statement #16–24:* Committee make recommendations on the feasibility of a multi-year phase-in implementation that all CFV mariners on CFVs of less than 200 GT and operating three miles beyond the baseline in a near-coastal zone obtain and maintain a Merchant Mariner Credential (without a Transportation Worker Identification Credential (TWIC) requirement).

e. *Task Statement #17–24:* Committee make recommendations on the feasibility of a multi-year phase-in implementation that all CFV mariners serving as a Master/Operator of a CFVs of less than 200 GT and operating three miles beyond the baseline in a near-coastal zone obtain and maintain an Operator of Uninspected Passenger Vessels (OUPV) Merchant Mariner Credential (without a TWIC requirement).

f. *Task Statement #18–24:* Committee make recommendations on liferaft service interval impacts with the commercial fishing industry and make recommendations to the USCG.

g. *Task Statement #19–24:* Make recommendations to the USCG on a Committee Special Recognition Award that acknowledges substantial accomplishments and contributions to fishing industry safety.

h. *Task Statement #20–24:* Committee make recommendations on processes to review and implement commercial fishing vessel mariner fitness-for-duty for service onboard CFVs of less than 200 GT fitness for duty and service should include an assessment of overall health and physical fitness and contain provisions for the elimination drug and alcohol usage and management of fatigue.

i. *Task Statement #21–24:* Committee develop guidance and make recommendations on fatigue limiting strategies as well as work/rest hour logging requirements.

j. *Task Statement #22–24:* Committee analyze fatigue and sleep deprivation impacts with the commercial fishing industry and make recommendations to the USCG.

VIII. Formation of Subcommittee(s) Break Out and Discussions.
- a. Action Items by Task.

IX. Public Comment Period.

X. Committee Discussion/Actions.

XI. Meeting Recess.

Day 3

XII. Subcommittee Break Out and Discussions.
- a. Action Items by Task.

XIII. Recommendations and Committee Actions.

XIV. Full Committee Open Discussion.

XV. Public Comment Period.

XVI. Plans for Next Meeting.

XVII. Closing Remarks/Committee and USCG.

XVIII. Adjournment of Meeting.

A copy of pre-meeting documentation will be available at *https://www.dco.uscg.mil/NCFSAC2024/* no later than April 3, 2024. Alternatively, you may contact Mr. Jonathan Wendland as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

There will be a public comment period scheduled each day of the meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: March 18, 2024.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2024–06106 Filed 3–21–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2024–0033; FXIA16710900000–245–FF09A10000]

Convention on International Trade in Endangered Species of Wild Fauna and Flora, Conference of the Parties, Twentieth Regular Meeting; Request for Information and Recommendations on Species Proposals, Resolutions, Decisions, and Agenda Items for Consideration

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: To implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention), the Parties to the Convention meet periodically to review what species in international trade should be regulated as well as other aspects of CITES implementation. The twentieth regular meeting of the Conference of the Parties (CoP20) is tentatively scheduled to be held in the second half of 2025. The specific date and location of CoP20 are yet to be determined. With this notice, we are soliciting recommendations to amend Appendices I and II of CITES at CoP20 as well as recommendations for resolutions, decisions, and agenda items for discussion at CoP20. We invite you to provide us with information and recommendations on animal and plant species for which the United States should consider submitting proposals to amend Appendices I and II. Such proposals may concern the addition of species to Appendix I or Appendix II, the transfer of species from one Appendix to another, or the removal of species from the Appendices. We also invite you to provide us with information and recommendations on resolutions, decisions, and agenda items that the United States might consider submitting for discussion at CoP20. Finally, with this notice, we also describe the United States' approach to preparations for CoP20.

DATES: We will consider all information and comments that we receive on or before May 21, 2024.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Using the Federal eRulemaking Portal: *http://www.regulations.gov,* search for FWS–HQ–IA–2024–0033, which is the docket number for this notice.

(2) *U.S. mail:* Mail comments to: Public Comments Processing, Attn: FWS–HQ–IA–2024–0033; U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept email or faxes. Comments and materials we receive, as well as supporting documentation, will be available for public inspection on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information pertaining to species proposals, contact Rosemarie Gnam, Head, Division of Scientific Authority, 703–358–1708 (phone); 703–358–2276 (fax); or *scientificauthority@fws.gov* (email). For information pertaining to resolutions, decisions, and agenda items, contact Naimah Aziz, Head, Division of Management Authority, at 703–358–2493 (phone); or *managementauthority@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The Convention is an international treaty aimed at ensuring that international trade in animal and plant species does not threaten their survival. Species are included in the Appendices to CITES and can be found on the CITES Secretariat's website at *https://cites.org/eng/app/appendices.php.*

Currently there are 184 Parties to CITES: 183 countries, including the United States, and the European Union—a regional economic integration organization. The Convention calls for regular meetings of the Conference of the Parties (CoP). The CoP has decided that these meetings should be held every 2–3 years. At the CoP meetings, the Parties review the implementation of CITES, make decisions regarding the financing and function of the CITES Secretariat located in Switzerland, consider amendments to Appendices I and II, consider reports presented by the Secretariat, and adopt recommendations for the improved effectiveness of CITES. Any Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by all the Parties at the meeting.

This is our first in a series of **Federal Register** notices that, together with at least one public meeting (time and location to be announced), provide you with an opportunity to provide input into the development of the United States' submissions to and negotiating positions for CoP20. In our second CoP20 **Federal Register** notice, we will announce tentative species proposals and documents related to resolutions, decisions, and agenda items that the United States is considering submitting for CoP20 and will solicit further information and comments on them. Our regulations guiding this public process can be found in title 50 of the Code of Federal Regulations (CFR) at 23.87.

Announcement of the Twentieth Meeting of the Conference of the Parties

We hereby notify all interested entities of the convening of CoP20, which is tentatively scheduled to be held in the second half of 2025 at a location to be determined. The CITES Secretariat is currently seeking expressions of interest from Parties to host CoP20.

United States Approach for CoP20

What are the priorities for United States submissions to CoP20?

Priorities for United States submissions to CoP20 continue to be consistent with the overall objective of United States participation in CITES: To maximize the effectiveness of the Convention in the conservation and sustainable use of species subject to international trade. With that in mind, we consider the following factors in determining what issues to submit for inclusion in the agenda at CoP20:

(1) *Does the proposed action address a serious wildlife or plant trade issue that the United States is experiencing as a range country for the species in trade or as a major trader for the species?* Since the primary responsibility of the U.S. Fish and Wildlife Service is the conservation of our domestic wildlife resources, we will give native species the highest priority. We will place particular emphasis on terrestrial and freshwater species with the majority of their range in the United States and its territories that are or may be traded in significant numbers; marine species that occur in United States waters or for which the United States is a major trader; and threatened and endangered species for which we and other Federal and State agencies already have statutory responsibility for protection and recovery. We also consider CITES listings as a proactive measure to monitor and manage trade in native species to preclude the need for the application of stricter measures, such as listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), or inclusion in CITES Appendix I.

(2) *Does the proposed action address a serious wildlife or plant trade issue for species not native to the United States?* As a major importer of wildlife, plants, and their products, the United States has taken responsibility, by working in close consultation with range countries, for addressing cases of potential over-exploitation of foreign species in the wild. In some cases, the United States may not be a range country or a significant trading country for a species, but we will work closely with other

countries to conserve species being threatened by unsustainable exploitation for international trade. We will consider CITES listings for species not native to the United States if these listings will assist in addressing cases of known or potential over-exploitation of foreign species in the wild, and in preventing illegal, unregulated trade, especially if the United States is a major importer. These species will be prioritized based on the extent of trade and status of a species and also the role the species plays in the ecosystem, with emphasis on those species for which CITES inclusion would provide the greatest conservation benefits to the species, associated species, and their habitats.

(3) *Does the proposed action provide additional conservation benefit for a species already covered by another international agreement?* The United States will consider the inclusion of such a species in the CITES Appendices when such inclusion would enhance the conservation of the species by ensuring that international trade is effectively regulated and not detrimental to the survival of the species.

Request for Information and Recommendations for Amending Appendices I or II

Through this notice, we solicit information and recommendations that will help us identify species that the United States could propose for addition to, removal from, or reclassification in the CITES Appendices, or to identify issues warranting attention by the CITES specialists on zoological and botanical nomenclature. This request is not limited to species occurring in the United States. We encourage the submission of information on any species for possible inclusion in, transfer between, or removal from the Appendices, including if those species are subject to international trade that is, or may become, detrimental to the survival of the species. We also encourage you to keep in mind the approach to CoP20, described above in this notice, when considering what proposals the United States should submit to amend the Appendices.

We ask that you submit robust information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of implementation and enforcement efforts; and (3) the level of international as well as domestic trade in the species, especially trend information. Please also provide any other relevant information, including a list of references. Although not required, we appreciate receiving complete proposals.

The term ''species'' is defined under CITES as ''any species, subspecies, or geographically separate population thereof.'' Each species for which trade is controlled under CITES is included in one of three Appendices, either as a separate listing or incorporated within a higher taxonomic listing. The basic standards for inclusion of species in the Appendices are contained in Article II of CITES (text of the Convention is on the CITES Secretariat's website at *https://cites.org/eng/disc/text.php*). Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. Appendix II also includes species that must be subject to regulation in order that trade in other CITES-listed species may be brought under effective control. Inclusion of such ''look alike'' species is usually necessary because of the difficulty inspectors have at ports of entry or exit in distinguishing one species from other species. Because Appendix III includes species that have been included in the Appendix unilaterally by a Party, we are not seeking input on possible United States Appendix-III listings with this notice, and we will not consider or respond to comments received concerning Appendix-III listings.

CITES regulates international trade in whole animals and plants (whether alive or dead) as well as in any readily recognizable parts or derivatives of animals included in Appendices I or II, and plants included in Appendix I. With certain exclusions formally approved by the Parties through the adoption of annotations, the same applies to the readily recognizable parts and derivatives of plant species included in Appendix II. In summary, when a species is included in Appendix I or II, the whole, live or dead, animal or plant is always included. In addition, all parts and derivatives thereof are also included in the same Appendix unless, for plant species included in Appendix II, the species is annotated to indicate that only specific parts and derivatives are included. Parts and derivatives often not included (*i.e.,* not regulated) for Appendix-II plants include: seeds, spores, pollen (including pollinia), leaves, and fruit. Please refer to the CITES Appendices on the Secretariat's website at *https://cites.org/eng/app/appendices.php* for information on further exceptions and limitations.

In 1994, the CITES Parties adopted criteria for inclusion of species in Appendices I and II (in Resolution Conf. 9.24 (Rev. CoP17); see *https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-09-24-R17.pdf.* These criteria apply to all proposals to amend the CITES Appendices I and II and are available from the CITES Secretariat's website at *http://www.cites.org/eng/res/index.php* or upon request from the Division of Scientific Authority (contact information provided above in **FOR FURTHER INFORMATION CONTACT**). Resolution Conf. 9.24 (Rev. CoP17) also provides a format for proposals to amend the Appendices. This information is available upon request from the Division of Scientific Authority (contact information provided above in **FOR FURTHER INFORMATION CONTACT**).

What information should be submitted for proposals to amend Appendices I and II?

In any recommendations you submit for possible proposals to amend Appendices I and II, please include as much of the following information about the species as possible in your submission:

(1) Scientific name and common name;

(2) Population size estimates (including references if available);

(3) Population trend information;

(4) Threats to the species (other than trade);

(5) The level or trend of international trade (be as specific as possible, but without a request for new searches of our records);

(6) The level or trend in total take from the wild (as specific as reasonable); and

(7) A short summary statement clearly presenting the rationale for inclusion in, or removal or transfer from, one of the Appendices, including which of the criteria in Resolution Conf. 9.24 (Rev. CoP17) are met.

If you wish to submit more complete proposals for us to consider, please consult Resolution Conf. 9.24 (Rev. CoP17) for the format for proposals and a detailed explanation of each of the categories. Proposals to transfer a species from Appendix I to Appendix II, or to remove a species from the Appendices, must also be in accordance with the precautionary measures described in Annex 4 to Resolution Conf. 9.24 (Rev. CoP17).

What will we do with information we receive?

The information that you submit will help us decide if we should submit, or co-sponsor with one or more other

Parties, a proposal to amend the CITES Appendices. However, there may be species that qualify for inclusion in CITES Appendices I or II for which we decide not to submit a proposal to CoP20. Our decision will be based on several factors, including the priorities we outlined above in the United States' approach to CoP20. We will consult range countries for foreign species, and for species whose range the United States shares with one or more other countries.

One important function of the CITES Scientific Authority of each Party country is monitoring international trade in plant and animal species, and ongoing scientific assessments of the impact of such trade on species. For United States native species included in Appendices I and II, we monitor trade through export permits issued so that we can prevent over-utilization and restrict exports if necessary. We work closely with States and Native American Tribes to ensure that species are appropriately listed in the CITES Appendices. For these reasons, we actively seek information about United States and foreign species subject to international trade.

Request for Information and Recommendations on Resolutions, Decisions, and Agenda Items

Although we have not yet received formal notice of the provisional agenda for CoP20, we invite your input on possible agenda items that the United States could recommend for inclusion on the agenda, and on possible resolutions and decisions of the CoP that the United States could submit for consideration. Copies of the agenda and the results of the last meeting of the CoP (CoP19), as well as copies of all currently valid Resolutions and Decisions of past CoPs, are available on the CITES Secretariat's website (*http://www.cites.org/*) or from the Division of Management Authority (contact information provided above in **FOR FURTHER INFORMATION CONTACT**).

Future Actions

As stated above, CoP20 is tentatively scheduled to be held in the second half of 2025, with a location to be determined. The United States must submit all proposals to amend Appendix I or II, and draft resolutions, decisions, or agenda items for discussion at CoP20, to the CITES Secretariat 150 days prior to the start of the meeting. To meet this deadline and to prepare for CoP20, we plan to keep the public informed about the CoP through a series of additional **Federal Register** notices and website postings in advance of CoP20. We will announce the tentative species proposals and proposed resolutions, decisions, and agenda items that the United States is considering submitting to CoP20 and solicit further information and comments on them. We will post on our website an announcement of the species proposals, draft resolutions, draft decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at CoP20. Finally, we will inform you about preliminary negotiating positions on resolutions, decisions, and amendments to the Appendices proposed by other Parties for consideration at CoP20, and about how to obtain observer status. We will also publish an announcement of a public meeting tentatively to be held approximately 2–3 months prior to CoP20, which will provide an opportunity to receive public input on our positions regarding CoP20 issues. The procedures for developing United States' documents and negotiating positions for a meeting of the Conference of the Parties to CITES are outlined in 50 CFR 23.87. As noted, we may modify or suspend the procedures outlined there if they would interfere with the timely or appropriate development of documents for submission to the CoP and U.S. negotiating positions.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including your personal identifying information—may be made publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review; however, we cannot guarantee that we will be able to do so.

Author

The primary authors of this notice are Thomas Leuteritz, Division of Scientific Authority, and Mark Hofberg, Division of Management Authority, United States Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–06064 Filed 3–21–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact (Standing Rock Sioux Tribe of North & South Dakota and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval by operation of law of the Tribal-State Gaming Compact between the Standing Rock Sioux Tribe of North & South Dakota and the State of South Dakota.

DATES: The Compact takes effect on March 22, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.,* (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of Class III gaming activity on the Tribe's Indian lands. *See* 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary, but only to the extent the compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(D). The IGRA also requires the Secretary to publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. *See* 25 U.S.C. (d)(8)(D). The Department's regulations at 25 CFR 293.4 require all compacts and amendments to be reviewed and approved by the Secretary prior to taking effect. The Secretary took no action on the Compact between the Standing Rock Sioux Tribe of North & South Dakota and the State of South Dakota within the 45-day statutory review period. Therefore, the Compact is considered to have been approved,

but only to the extent it is consistent with IGRA. See 25 U.S.C. 2710(d)(8)(C).

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by delegation the authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2024–06124 Filed 3–21–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board; Notice of Meeting

This notice announces a forthcoming meeting of the National Institute of Corrections (NIC) Advisory Board. At least one portion of the meeting will be closed to the public.

Name of the Committee: NIC Advisory Board.

General Function of the Committee: To aid the National Institute of Corrections in developing long-range plans, advise on program development, and recommend guidance to assist NIC's efforts in the areas of training, technical assistance, information services, and policy/program development assistance to Federal, state, and local corrections agencies.

Date and Time: 8:30 a.m.–4:30 p.m. ET on Wednesday, April 3, 2024; 8:30 a.m.–12:00 p.m. ET on Thursday, April 4, 2024; (approximate times).

Location: NIC Offices, 901 D Street SW, Room 901–3, Washington, DC 20024.

Contact Person: Leslie LeMaster, Designated Federal Official (DFO) to the NIC Advisory Board, The National Institute of Corrections, 320 First Street NW, Room 901–3, Washington, DC 20534. To contact Ms. LeMaster, please call (202) 305–5773 or *llemaster@bop.gov.*

Agenda: On April 3–4, 2024, the Advisory Board will: (1) receive a brief Agency Report from the NIC Acting Director, (2) receive project-specific updates from all NIC divisions, and (3) updates from association and agency partners to the Board. Time for questions and counsel from the Board is built into the agenda.

Procedure: On Wednesday, April 3, 2024, 8:30 a.m.–4:30 p.m., and April 4, 2024, 8:30 a.m.–11:00 a.m., the meeting is open to the public. Interested persons may request to attend in person and/or virtually, and present data, information, or views, orally or in writing, on issues pending before the committee. Such requests must be made to the contact person on or before March 27, 2024. The public comment period is scheduled for approximately 10:40 a.m.–10:50 a.m. on April 4, 2024. The time allotted for each presentation may be limited. Those who wish to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names, titles, agencies, addresses, and email addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 27, 2024.

Closed Committee Deliberations: On April 4, 2024, between 11:00 a.m.–12:00 p.m., the meeting will be closed to permit discussion of information that (1) relates solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and (2) is of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The Advisory Board will discuss the outcomes of continuing efforts to make recommendations to the Attorney General for the NIC Director vacancy.

General Information: NIC welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leslie LeMaster at least 7 days in advance of the meeting. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Leslie LeMaster,

Designated Federal Official, National Institute of Corrections.

[FR Doc. 2024–06091 Filed 3–21–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2024–01; Exemption Application No. D–12096]

Exemption From Certain Prohibited Transaction Restrictions Involving TT International Asset Management Ltd (TTI or the Applicant) Located in London, United Kingdom

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This exemption allows TTI to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo), as described below.

DATES: The exemption will be in effect for a period of five years, beginning on February 13, 2024, and ending on February 12, 2029.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 20, 2023, the Department published a notice of proposed exemption in the **Federal Register** [1] that would permit TTI to continue its reliance on the exemptive relief provided by the QPAM Exemption [2] for a period of five years, notwithstanding the judgment of conviction against TTI's affiliate, Nikko Tokyo for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Conviction).[3] After considering the Applicant's comment on the proposal, the Department is granting this exemption to protect the interests of participants and beneficiaries of ERISA-covered Plans and IRAs managed by TTI (together, Covered Plans).[4]

This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

[1] 88 FR 88115 (December 20, 2023).

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[3] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain crimes.

[4] The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which TTI relies on PTE 84–14, or with respect to which TTI has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent that TTI has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

The Department intends for the terms of this exemption to promote adherence by TTI to basic fiduciary standards under Title I of ERISA and the Code. An important objective in granting this exemption is to ensure that Covered Plans can terminate their relationships with TTI in an orderly and cost-effective fashion if the fiduciary of a Covered Plan determines it is prudent to do so.

Based on the Applicant's adherence to all the conditions of PTE 2023–13 and this exemption, the Department makes the requisite findings under ERISA section 408(a) that the exemption is: (1) administratively feasible for the Department, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are necessary, individually and taken as a whole, for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA section 408(a) in accordance with the Department's exemption procedures set forth in 29 CFR part 2570, subpart B.[5]

Background

1. The Sumitomo Mitsui Banking Corporation group (SMBC) is a Japanese financial services firm that provides asset management services through two subsidiaries. The first is TTI, which is managed independently of the broader SMBC group. The second is Sumitomo Mitsui DS Asset Management Company, Limited, an investment manager headquartered in Tokyo. The SMBC group also conducts securities market activities through the SMBC Nikko Securities franchise, which includes Nikko Tokyo, a Japanese broker-dealer.

2. TTI is a global investment firm headquartered in London, UK that manages approximately $7.1 billion in assets. TTI and its subsidiaries have operations in the United States, Hong Kong, and Japan.[6] TTI was wholly acquired by Sumitomo Mitsui Financial Group, Inc. (SMFG) on February 28, 2020, and is currently a member of the SMBC Group. Since the acquisition, TTI has remained a stand-alone business with distinct reporting lines, governance structures, and control frameworks.

3. TTI is an SEC-registered investment advisor that specializes in managing portfolios for institutional investors, including ERISA-covered Plans, public retirement plans, and other collective investment vehicles through a variety of investment strategies and industry sectors.

4. When offering investment management services, TTI operates as a QPAM in reliance on PTE 84–14.[7] TTI advises four segregated ERISA accounts on behalf of the ERISA-covered plans of two major U.S. employers[8] and operates a single public pension plan account with approximately $40 million in assets. TTI also manages two funds as ERISA ''plan asset'' funds: the TT Emerging Markets Opportunities Fund II Limited, which is operational and holds ERISA assets;[9] and the TT Environmental Solutions Equity Master Fund II Limited, which TTI is in the process of launching.

ERISA and Code Prohibited Transactions and PTE 84–14

5. The rules set forth in ERISA section 406 and Code section 4975(c)(1) proscribe certain ''prohibited transactions'' between plans and certain parties in interest with respect to those plans.[10] ERISA section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary and a sponsoring employer of the plan, and certain of their affiliates.[11] The prohibited transaction provisions under ERISA section 406(a) and Code section 4975(c)(1) prohibit, in relevant part, (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.[12]

6. Under the authority of ERISA section 408(a) and Code section 4975(c)(2), the Department has the authority to grant an exemption from such ''prohibited transactions'' in accordance with the procedures set forth in its exemption procedure regulation, if the Department finds that an exemption is: (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries, and (c) protective of the rights of the plan's participants and beneficiaries.[13]

7. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) in which a plan has an interest if the investment manager managing the investment fund satisfies the definition of a ''qualified professional asset manager'' (QPAM) and satisfies additional conditions of the exemption. PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.[14]

8. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the QPAM definition from utilizing the exemptive relief for itself and its client plans if that entity, an ''affiliate'' thereof, or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in Section I(g) within the 10 years immediately preceding a transaction.[15]

Nikko Tokyo Conviction and PTE 84–14 Disqualification

9. On February 13, 2023, Nikko Tokyo was convicted in Tokyo District Court of violating Japan's Financial Instruments and Exchange Act (the FIEA) for attempting to peg, fix, or stabilize[16] the

[5] 76 FR 66637, 66644, (October 27, 2011).

[6] TTI subsidiaries include TT International Investment Management LLP, TT International (Hong Kong) Ltd, TT Crosby Ltd, and TT International Advisors Inc.

[7] TTI is currently the only member of the SMBC group that relies on the QPAM Exemption.

[8] Together, these two ERISA-covered plans currently hold approximately $352.7 million in assets.

[9] As of February 29, 2024, the total value of ERISA plan assets in TT Emerging Markets Opportunities Fund II Limited was $135,959,197.43.

[10] For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[11] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[12] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

[13] The Department's exemption procedure regulation is codified at 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

[14] See 75 FR 38837, 38839 (July 6, 2010).

[15] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[16] According to the Applicant, the unofficial English-language translation of Article 159, paragraph 3 of the FIEA, available on the Japanese Financial Services Agency website, provides that no person may ''conduct a series of Sales and Purchase of Securities, etc. or make offer, Entrustment, etc. or Accepting an Entrustment, etc. therefore in violation of a Cabinet Order for the purpose of pegging, fixing or stabilizing prices of Listed Financial Instruments, etc. in a Financial Instruments Exchange Market or prices of Over-the-

prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Conviction). Nikko Tokyo was convicted of 10 violations of the FIEA and was ordered to pay a ¥700 million fine (approximately $5.3 million) and a surcharge of approximately ¥4.5 billion (approximately $33.7 million).[17]

Between December 2019 and November 2021, Nikko Tokyo, through the actions of relevant officers and employees, purchased shares of ten issuers for its own account in an attempt to peg, fix, or stabilize the prices of those securities in anticipation of a block offer. This activity was intended to ensure that the price of the securities being sold through the block offering did not decline significantly, which would have potentially harmed Nikko Tokyo's interests.[18]

Nikko Tokyo Affiliation and Loss of QPAM Status

10. Both TTI and Nikko Tokyo are direct subsidiaries of SMFG and thus are affiliates for purposes of Section I(g) of PTE 84–14. When the Tokyo District Court sentenced Nikko Tokyo in connection with the Conviction, Section I(g) of PTE 84–14 was triggered, and TTI became ineligible to rely on the QPAM Exemption to service its plan clients without receiving an individual prohibited transaction exemption from the Department.

PTE 2023–13

11. On April 28, 2023, the Department granted PTE 2023–13,[19] which permits TTI to continue to rely upon the relief provided in the QPAM exemption for a one-year period from the date of the Conviction. The Department declined TTI's request for a longer five-year exemption term and instead granted a limited one-year term that applies exclusively to TTI, to provide the Department with the opportunity to review TTI's adherence to the conditions set out in the one-year exemption before considering whether to provide TTI with longer-term relief after TTI submitted an exemption request for further relief.

TTI's Compliance With the Conditions of PTE 2023–13

12. PTE 2023–13 contains a set of conditions that are designed to protect Covered Plans that entrust their assets to TTI despite the serious nature of the criminal misconduct underlying the Conviction of Nikko Tokyo. TTI states that it has complied with the conditions of PTE 2023–13 and, therefore, should be permitted to continue to rely upon PTE 84–14 to avoid substantial costs and other disruptions that would occur if TTI could no longer act as a QPAM. TTI represents that it has taken the following concrete steps described in items 13–17 below to comply with the requirements of PTE 2023–13.

13. *Adoption of Comprehensive Policies.* TTI represents that it has developed and implemented specific policies (the ERISA Policies) that ensure that asset management decisions of TTI are conducted independently of Nikko Tokyo. TTI represents that its ERISA Policies promote compliance with ERISA's fiduciary duties and prohibited transaction provisions, including with respect to co-fiduciary liability, and ensure accuracy in communications with regulators and Covered Plan clients. TTI further represents that its ERISA Policies require monitoring to ensure compliance with the specific terms of PTE 2023–13 and the prompt identification and correction of any policy violations.

TTI represents that it maintains policies and procedures that are reasonably designed to ensure that all TTI personnel comply with applicable regulations and act in the best interests of TTI's clients, including ERISA plan participants. TTI represents that it does not share trading decisions and investment strategies for its clients with personnel outside of TTI's asset management businesses and does not consult with other parts of the SMBC group in connection with the investment decisions it makes on behalf of its clients.

14. *Implementation of a Training Program.* TTI represents that it has implemented a comprehensive, mandatory training program for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel (the ERISA Training). TTI submits that initial ERISA Training sessions under PTE 2023–13 have been completed, with mandatory attendance for relevant personnel. TTI represents further that it has made electronic training modules available for new relevant personnel and that follow-ups are made to ensure that all relevant personnel complete the Training.

15. *Disclosure to Client and Amendment of Client Agreements.* TTI represents that it has provided its Covered Plan clients with a copy of PTE 2023–13, a summary of TTI's written ERISA Policies developed in connection therewith, a summary of the conduct leading to the Conviction, and notice that the requirements of the QPAM Exemption were not satisfied as a result of the Conviction. TTI states further that it has amended its agreements with Covered Plan clients to allow for the termination of the relationship with TTI without penalty to the Covered Plan clients, and to incorporate all other conditions of PTE 2023–13. TTI notes that, throughout this process, no Covered Plan client has decided to terminate its relationship with TTI.

16. *Strengthening of Compliance within TTI.* TTI represents that it has designated its Chief Compliance Officer as the initial Compliance Officer under PTE 2023–13 to oversee TTI's ERISA Policies and ERISA Training and ensure that each conforms to the requirements set out in PTE 2023–13. TTI states that its Chief Compliance Officer has a direct reporting line to senior management.

17. *Strengthening of Compliance within the SMBC Group.* TTI represents that TTI and the SMBC group have strengthened their group-wide coordination regarding potentially disqualifying conduct to ensure compliance with the conditions of PTE 2023–13, including identification of deferred prosecution or non-prosecution agreements. Further, to prevent the possibility of reoccurrence, Nikko Tokyo has ceased block offerings while completing remedial measures supervised by Japanese regulators, including a verification process to assess whether the root causes of the problems have been addressed. For more information on TTI's compliance with the requirements of PTE 2023–13, please see Representations 14–20 of the proposed exemption.[20]

Remedial Efforts by Nikko Tokyo and SMFG

18. According to TTI, Nikko Tokyo has taken significant steps to address the issues that led to the Conviction and has enhanced its policies and procedures related to proprietary trading and enhanced its surveillance over that activity, including hiring additional compliance officers. In addition, Nikko Tokyo refused to renew its employment contracts with each of

Counter Traded Securities in an Over-the-Counter Securities Market.''

[17] A block offering is a type of limited public offering that is common in Japan whereby a dealer typically applies a spread to the price at which it purchases the shares from the seller and the price at which it sells them in the block offering.

[18] The Tokyo Public Prosecutor alleged that these ''stabilization transactions'' violated Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

[19] See PTE 2023–13, 88 FR 26336 (April 28, 2023).

[20] See 88 FR at 88118 (December 20, 2023).

the four executive officers who were alleged to have been involved in the misconduct underlying the Conviction and has dismissed the remaining two employees on disciplinary grounds.

Separation of TTI and Nikko Tokyo

19. TTI represents that: none of the misconduct underlying the Nikko Tokyo Conviction involved TTI or the SMBC group's asset management businesses; no TTI personnel were involved in the misconduct; and no individual officer or employee of Nikko Tokyo had any role at TTI. According to the Applicant, TTI and Nikko Tokyo have separate businesses, operations, management teams, systems, premises, and legal and compliance personnel. Since its acquisition by SMFG on February 28, 2020, TTI has remained a stand-alone business with distinct reporting lines, governance structures, and control frameworks. Further, TTI is not directly owned by or in the same vertical ownership chain as Nikko Tokyo, and TTI and Nikko Tokyo do not share personnel or office space.

20. According to the Applicant, TTI personnel remain fully and independently responsible for TTI's material functions, including portfolio and risk management activities, investment and trading decisions, compliance, marketing, and the provision of client services. TTI states that it has detailed policies setting forth its process for handling ERISA assets, identifying and addressing conflicts of interest, and best execution. TTI also represents that it has a dedicated Compliance Manual that sets forth, among other things, firm policies related to whistleblowing, handling internal and external complaints, client onboarding, and the process for approving new products or instruments.

TTI further represents that Nikko Tokyo is not a QPAM, does not manage any ERISA assets, and that no ERISA assets were involved in the misconduct underlying the Nikko Tokyo Conviction. Further, TTI has not engaged in trading activity with Nikko Tokyo on behalf of ERISA accounts at any point since TTI became affiliated with Nikko Tokyo. For more information on the separation of TTI and Nikko Tokyo, please see Representations 22–26 of the proposed exemption.[21]

Hardship to Covered Plans

21. TTI represents that Covered Plans would suffer certain hardships if TTI loses its eligibility to rely on the QPAM Exemption. TTI's representations regarding these hardships are set forth below in paragraphs 22 through 29.

22. According to the Applicant, loss of the QPAM Exemption would severely limit the investment transactions available to the accounts that TTI manages on behalf of Covered Plans, hindering TTI's ability to efficiently manage the strategies for which it contracted with Covered Plan clients. Further, if TTI were ineligible to rely on the QPAM Exemption, it could receive less advantageous pricing for transactions it engages in on behalf of Covered Plans.

23. TTI represents that the QPAM Exemption is the only exemption available to provide relief for certain types of investment transactions it enters into on behalf of Covered Plans. TTI represents that counterparties to the swaps and other transactions in which TTI-managed accounts engage require compliance with, and a representation as to satisfaction of the conditions of, the QPAM Exemption.

24. TTI represents that considering the nature of emerging market investments and swap, options, and other derivative transactions, Covered Plan clients and counterparties are reluctant to utilize more recent alternative exemptions, such as the service provider exemption under ERISA section 408(b)(17). This reluctance is due to uncertainty about the application of the adequate consideration requirements of the statutory exemption and the resulting possibility that the use of the exemption could later be challenged by the Department on those grounds.

25. TTI states that it relies on the QPAM Exemption to conduct a variety of transactions on behalf of Covered Plans, including buying and selling equity securities; preferred stock; American Depository Receipts, and related options; U.S. and foreign fixed-income instruments, including unregistered offerings; various derivatives, including futures, options on futures, and swaps; and foreign exchange products, including spot currencies, forwards, and swaps.[22]

26. TTI represents that if it loses its ability to rely upon the QPAM Exemption, it would no longer be able to hedge currency for its private and public plan asset clients, preventing it from managing absolute and relative currency risk for such clients in such clients' best interests. TTI states that it specializes in international and emerging market strategies that depend on TTI's ability to translate and maintain the value of Covered Plan investments from the local currency in which the investment is made into U.S. dollars, the benchmark currency in which performance is measured. To limit plan risk exposure to the underlying securities without simultaneously exposing them to the risk of currency fluctuation, TTI makes substantial use of foreign exchange (FX) hedges by using forward transactions and other FX derivatives. If this exemption is not granted, TTI states that nearly $900 million in ERISA plans and separately managed accounts for private and public employers would likely be affected, either directly or as a result of TTI's inability to effectively hedge risk. For all but one of the ERISA funds that TTI manages, virtually all assets are either actively or dynamically hedged based on exposures and market conditions.[23]

As of November 3, 2022, approximately 16% of the assets under management (AUM) in each of the four segregated ERISA accounts that TTI manages are hedged with respect to Indian, Taiwanese, and Chinese currency, which translates to approximately $35 million in hedges. Further, the TT Emerging Markets Opportunities Fund II has over the past two years hedged risks associated with British, Indian, Taiwanese, Chinese, Mexican, and Polish currencies. Without these positions, the Applicant states that the TT Emerging Markets Opportunities Fund II would have incurred nearly $5.5 million in losses due to unhedged FX exposures, negatively impacting overall returns.

27. TTI represents that the loss of the QPAM Exemption would also impact TTI's agreements with the swap dealers it executes these hedges with pursuant to International Swaps and Derivatives Association Agreements (ISDA Agreements). ISDA agreements require TTI to represent that it meets all conditions of the QPAM Exemption, and a breach of this representation would entitle the counterparty to terminate the transaction. TTI states that, as a practical matter, swap dealers would be nearly certain to exercise their right to terminate because TTI's loss of the QPAM Exemption would increase the swap dealers' exposure to risk. Thus, these agreements would be unwound and TTI would no longer be able to employ the hedging activities on which its strategies depend. If these ISDA Agreements were terminated, TTI

[21] See 88 FR at 88118–88119 (December 20, 2023).

[22] TTI also relies upon the QPAM Exemption for the purchase and sale of both foreign and domestic equity securities, registered and sold under Rule 144A or otherwise (*e.g.,* traditional private placement).

[23] The actual percentage of AUM in each fund that is hedged at any given time varies.

states that it would immediately need to unwind approximately $73,784,388 million in hedges.

28. TTI submits that if this exemption is not granted, Covered Plans could incur transaction costs, costs associated with finding and evaluating other managers, and costs associated with reinvesting assets with those new managers. These costs, according to TTI include the following: (a) consultant fees, legal fees, and other due diligence expenses associated with identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities as a result of the change in investment managers.

The Applicant states that, given the sophistication of TTI's investment strategies, Covered Plan clients would likely engage in a full RFP process that could take several months to complete. TTI states that plans generally incur tens of thousands of dollars in consulting and legal fees in connection with a search for a new manager and that consultants may charge more for searches involving specialized strategies, such as TTI's international, emerging markets, and environmentally conscious portfolios.

29. TTI provides estimated liquidation costs associated with a loss of QPAM status as dollar cost estimates for its emerging market equity portfolios only, which represents the predominant strategy for ERISA Clients. TTI states that its estimates on equity liquidation costs listed below are based on the gross values of the portfolio, utilizing the basis point figures, without analysis as to the specific portfolio components.

ERISA client	Emerging market portfolio AUM at 12/7/23	Min. 30-day equity liquidation cost (30 bps)	Max. 30-day liquidation cost (50 bps)	Min. intermediate liquidation cost (40 bps)
1	$54,845,803	$164,537	$274,229	$219,383
2	172,160,384	516,481	860,801	688,641
3	102,787,100	308,361	513,935	411,148
(Plan Asset Fund)	441,117,644	1,323,352	2,205,588	1,764,470
Total	770,910,931	2,312,731	3,854,553	3,083,642

ERISA client	Max. intermediate liquidation cost (80 bps)	Commission fees (10 bps)	Liquidation cost of currency hedge (50 bps)
1	$438,766	$54,845	$27,788
2	1,377,283	172,160	86,914
3	822,296	102,787	51,982
Plan Asset Fund	3,528,941	441,117	202,235
Total	6,167,286	770,909	368,919

The Department notes that this exemption includes protective conditions that allow Covered Plans to continue to utilize the services of TTI if they determine that it is prudent to do so. In this regard, this exemption allows Covered Plans to avoid cost and disruption to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because TTI is no longer able to rely on the relief provided by PTE 84–14 due to the Conviction.

Written Comments

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption by February 2, 2024. The Department received one written comment from the Applicant and no requests for a public hearing.

I. Comments From the Applicant

Comment 1: SMFG Review of the Audit Report (Section (III)(i)(8))

The Applicant requests that condition (i)(8) of the proposed exemption be modified to permit the General Manager of the Corporate Planning Department to review and certify the Audit Report. The Applicant asserts that the General Manager of the Corporate Planning Department is senior to the joint general manager of SMFG's Corporate Planning Department.

Department's Response: The Department agrees with the Applicant's request and has modified Section (III)(i)(8) accordingly.

Comment 2: Summary of Facts and Representations

The Applicant notes the following updates and clarifications to the Summary of Facts and Representations.

- Paragraph 4: TTI currently has a single public plan account with approximately $40 million in assets, and the TT Non-U.S. Equity Master Fund Limited is now closed.
- Paragraph 9: Because the Conviction that occurred on February 13, 2023, only included Nikko Tokyo and not Nikko Tokyo *and four of its officers and employees* as stated in the proposed exemption, the first sentence of Paragraph 9 should state, ''On February 13, 2023, Nikko Tokyo was convicted . . .''
- Paragraph 9: the second sentence of the second paragraph should be updated as follows: ''Between December 2019 and April 2021, Nikko Tokyo, through the actions of relevant officers and employees, purchased shares of ten issuers for its own account . . .''
- Paragraph 21: the words ''its employment contracts'' should be ''its contracts''.
- Paragraph 23: the TTI Board now consists of six directors, made up of three TTI directors and three representatives of the SMBC group.

Department's Response: The Department accepts the Applicant's updates and clarifications to the Summary of Facts and Representations.

The complete application file (D–12096) is available for public inspection in the Public Disclosure Room of the

Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published on December 20, 2023, at 88 FR 88115.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including but not limited to any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible for the Department; (b) in the interests of Covered Plans and their participants and beneficiaries; and (c) protective of the rights of the Covered Plans' participants and beneficiaries.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive for determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a) in accordance with the Department's exemption procedures set forth in 29 CFR part 2570, subpart B: [24]

Exemption

Section I. Definitions

(a) The term ''Conviction'' means the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo) in Tokyo District Court for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering that occurred on February 13, 2023.

(b) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which TTI relies on PTE 84–14, or with respect to which TTI has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that TTI has expressly disclaimed reliance on QPAM status or PTE 84–14 when entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term ''Exemption Period'' means the five-year period beginning on February 13, 2024, and ending on February 12, 2029.

(d) The term ''TTI'' means TT International Asset Management Ltd, and does not include SMBC Nikko Securities, Inc. (Nikko Tokyo), or any other entity affiliated with TT International Asset Management Ltd.

Section II. Covered Transactions

Under this exemption, TTI will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption) notwithstanding the Conviction, as defined in Section I(a), during the Exemption Period, as defined in Section I(c), provided that it satisfies the conditions set forth in Section III below.

Section III. Conditions

(a) TTI (including its officers, directors, agents other than Nikko Tokyo, and employees) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this exemption, ''participate in'' refers not only to active participation in the criminal conduct of Nikko Tokyo that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to TTI's Board of Directors;

(b) TTI (including its officers, directors, employees, and agents, other than Nikko Tokyo) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) TTI does not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct that is the subject of the Conviction;

(d) At all times during the Exemption Period, TTI will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by TTI in reliance on PTE 84–14, or with respect to which TTI has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with Nikko Tokyo, or to engage Nikko Tokyo to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of TTI to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) TTI did not exercise authority over the assets of any Covered Plan in a manner that it knew or should have known would further the criminal conduct that is the subject of the Conviction or cause TTI or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Nikko Tokyo will not act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

[24] 76 FR 66637, 66644 (October 27, 2011).

(h)(1) TTI must continue to implement, maintain, adjust (to the extent necessary), and follow the written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of TTI are conducted independently of the corporate management and business activities of Nikko Tokyo;

(ii) TTI fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) TTI does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by TTI to regulators, including, but not limited to, the Department of Labor (the Department), the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at that time;

(v) To the best of TTI's knowledge at the time, TTI does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) TTI complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs (ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after TTI reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the general counsel (or their functional equivalent) of TTI, and the independent auditor responsible for reviewing compliance with the Policies. TTI will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after TTI reasonably should have known of the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) TTI must continue to implement an annual training program (the Training) during the Exemption Period for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (a) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (b) be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) TTI must submit to biennial audits conducted by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and TTI's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated into the Policies. The first audit covered under this exemption must cover the period of February 13, 2025, through February 12, 2026, and must be completed by August 12, 2026. The second audit covered under this exemption must cover the period of February 13, 2027, through February 12, 2028, and must be completed by August 12, 2028.

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, TTI will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege, and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether TTI has developed, implemented, maintained, and followed the Policies in accordance with the conditions of the exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test TTI's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for TTI, transactions involving Covered Plans sufficient in size, number, and nature to afford the auditor a reasonable basis to determine TTI's operational compliance with the Policies and Training;

(5) Before the end of the relevant period for completing the audit, the auditor must issue a written report (the Audit Report) to TTI that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of TTI's Policies and Training; TTI's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of TTI's noncompliance with the written Policies and Training described in Section III(h) above. TTI must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training. Any action taken, or the plan of action to be taken by TTI must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that TTI has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that TTI has complied with the requirements under this subparagraph must be based on evidence that TTI has actually implemented, maintained, and followed the Policies and Training required by the exemption. Furthermore, the auditor must not solely rely on the Report created by the compliance officer (the Compliance Officer), as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed

by the auditor, as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Review described in Section III(m);

(6) The auditor must notify TTI of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of TTI must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and the exemption and that to the best of such officer's knowledge at the time, TTI has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person identified by Japanese authorities, who knew of, or should have known of, or participated in, any misconduct underlying the Conviction, by any party, may provide the certification required by the exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) TTI's Board of Directors must be provided a copy of the Audit Report and the general manager or the joint general manager of SMFG's Corporate Planning Department must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report. With respect to this subsection (8), such certifying general manager or joint general manager must not have known of, had reason to know of, or participated in, any misconduct underlying the Conviction. If the certifying general manager or joint general manager was aware of the misconduct, they must have taken documented steps to stop the misconduct underlying the Conviction;

(9) TTI must provide its certified Audit Report, by electronic mail to *e-oed@dol.gov*. This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, TTI must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) TTI and the auditor must submit to *e-OED@dol.gov,* any engagement agreement(s) entered into pursuant to the engagement of the auditor under the exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, access to all the workpapers it created and utilized in the course of the audit for inspection and review, provided such access and inspection is otherwise permitted by law; and

(12) TTI must notify the Department of a change in the independent auditor no later than 60 days after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and TTI;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between TTI and a Covered Plan, TTI agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such Covered Plan, to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan with respect to: any actual losses resulting directly from TTI's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by TTI; or any claim arising out of the failure of TTI to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by TTI's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 because of TTI's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of TTI for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with TTI with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by TTI, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and the restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting the liability of TTI for a violation of such agreement's terms. To the extent consistent with ERISA section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of TTI and its affiliates, or damages arising from acts outside the control of TTI; and

(7) TTI must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, TTI must agree to its obligations under this Section III(j) in an updated investment management agreement between TTI and such clients or other written

contractual agreement. Notwithstanding the above, TTI will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, TTI must provide notice of the exemption as published in the **Federal Register** to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with TTI, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department. The Summary must contain a prominently displayed statement (the Statement) that the Conviction resulted in TTI's failure to meet a condition in PTE 84–14. All prospective Covered Plan clients that enter into a written asset or investment management agreement with TTI within 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from TTI. The notices may be delivered electronically (including by an email that has a website link to the exemption). Notwithstanding the above, TTI will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

(l) TTI must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If an affiliate of TTI (as defined in Section VI(d) of PTE 84–14) is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period, relief in the exemption would terminate immediately;

(m)(1) TTI must continue to designate a senior compliance officer (the Compliance Officer) to be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer previously designated by TTI under PTE 2023–13 may continue to serve in the role of Compliance Officer provided they meet all the requirements of this Section (m)(1). Notwithstanding the above, no person, including any person referenced in the indictment that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the indictment, by any party, may be involved with the designation or responsibilities required by this condition unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of TTI's implementation of the Policies and Training. With respect to the Compliance Officer, TTI must meet the following conditions:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

(2) With respect to the Exemption Review, TTI must meet the following conditions:

(i) The Exemption Review must include a review of TTI's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of TTI; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of TTI;

(ii) The Compliance Officer must prepare a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions in response to such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year, and any related correction taken to date, has been identified in the Exemption Report; and (D) TTI complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of TTI; the head of compliance and the general counsel (or their functional equivalent) of TTI; and must be made unconditionally available to the independent auditor described above;

(v) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates.

(n) TTI must impose internal procedures, controls, and protocols to reduce the likelihood of a recurrence of conduct that is the subject of the Conviction;

(o) Nikko Tokyo must comply in all material respects with any requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) TTI must maintain records necessary to demonstrate that it has met the conditions of the exemption for six (6) years following the date of any transaction for which TTI relies upon the relief provided in this exemption;

(q) During the Exemption Period, TTI must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA), TTI or any of its affiliates (as defined in Section VI(d) of PTE 84–14) enter into with the U.S. Department of Justice in connection with the conduct described in Section I(g) of PTE 84–14 or ERISA section 411; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the conduct and allegations that led to the NPA or DPA;

(r) Within 60 days after the effective date of this exemption, TTI, must clearly and prominently inform Covered Plan clients in its agreements with, or in other written disclosures provided to Covered Plans of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of TTI's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If TTI meets this disclosure requirement by providing Summary Policies, changes to

the Policies will not result in the requirement for TTI to provide a new disclosure to Covered Plans unless the Summary Policies are no longer accurate as a result of changes to the Policies. With respect to this requirement, TTI may maintain the description continuously on a website, provided that TTI clearly and prominently provides a website link to the Policies or Summary Policies to each Covered Plan;

(s) TTI must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request by the Department; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times.

Exemption Date: This exemption is in effect for a period of five years beginning on February 13, 2024, and ending on February 12, 2029.

Signed at Washington, DC, this 19th day of March 2024.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2024–06125 Filed 3–21–24; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement with change of the ''Work Schedules Supplement (WSS) to the Current Population Survey (CPS).'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before May 21, 2024.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this request for review is for the Bureau of Labor Statistics (BLS) to obtain clearance for the Work Schedule Supplement (WSS or the supplement) to the Current Population Survey (CPS), scheduled to be conducted in September 2024. This supplement was last conducted with the May 2004 CPS.

The results of this supplement will increase our understanding of work schedules (including shift work) and work at home for the employed by various demographic characteristics, occupations, and industries. The data will expand our understanding of current workplace arrangements and how those arrangements have changed over time. Policy makers also can use these data to inform the design of regulations for different types of workers.

Since the supplement was last collected in 2004, work patterns and policies have changed. The disruption of the coronavirus (COVID–19) pandemic has had lasting impacts on work at home and increased the demand for information about work at home. The Work Schedules Supplement provides information on the number and characteristics of people who work at home, including people who operate businesses from their homes. It includes items about the frequency of work at home and makes it easier to identify people who work entirely at home, a topic of interest for researchers and policy makers. For those who work entirely at home, there are new questions about whether they have a worksite they could go to and why they don't work there.

As work at home is more common than in the past, there is a need to have more information about the nature of this work, including identifying people who work entirely at home and quantifying how much people work at home. Policy makers lack information about hybrid work (combining at-home and on-site work) from a large-scale comprehensive labor force survey. For people who work at home some of the time, the supplement asks about hours and days of the week worked at home, including days worked exclusively at home. These items will shed light on the intensity of work at home. There are also questions about work at home on second jobs.

In terms of work schedules, the supplement includes questions to identify shift workers and the reason people work a non-daytime shift. Other questions ask whether people can vary their work hours (the time they start and end work), days worked, or shift worked. Other questions ask about how many and which days of the week people work (including items about second jobs). The 2024 supplement also includes a question about how far in advance workers know their work schedule. Researchers and policy makers can use these data to identify people who lack advance notice of their work schedule or may have unstable work schedules.

Because this supplement is part of the Current Population Survey, in which detailed demographic data are collected, estimates can be produced for a variety of population groups. Given sufficient sample size, comparisons will be possible across demographic characteristics such as sex, age, race, Hispanic or Latino ethnicity, and educational attainment. Comparisons by class of worker, industry, and occupation will also be possible.

II. Current Action

Office of Management and Budget clearance is being sought for the reinstatement with change of the Work Schedules Supplement (WSS) to the Current Population Survey (CPS). A reinstatement with change of this previously approved collection, for which approval has expired, is needed to provide the Nation with timely information about work schedules (including shift work) and work at home.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Work Schedules Supplement (WSS) to the Current Population Survey (CPS).

OMB Number: 1220–0119.

Type of Review: Reinstatement, with change.

Affected Public: Individuals or households.

Annual Number of Respondents: 47,000.

Number of Responses per Respondent: One.

Total Annual Responses: 47,000.

Average Time per Response: 5 minutes.

Estimated Annual Total Burden Hours: 3,917 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on March 15, 2024.

Eric Molina,

Chief, Division of Management Systems, Branch of Policy Analysis.

[FR Doc. 2024–06054 Filed 3–21–24; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: [24–020]]

Name of Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: NASA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are due by May 21, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Bill Edwards-Bodmer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, phone 757–864–7998, or email *hq-ocio-pra-program@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations; provide an early warning of issues with service; or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness; appropriateness; accuracy of information; courtesy; efficiency of service delivery; and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

Authority: NASA is committed to effectively performing the Agency's communication function in accordance with the Space Act Section 203(a)(3) to ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof,'' and to enhance public understanding of, and participation in, the nation's aeronautical and space program in accordance with the NASA Strategic Plan.

II. Methods of Collection

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Information gathered will only be used internally for general service improvement and program management purposes and is not intended for release outside of the Agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made; the sampling frame; the sample design (including stratification and clustering); the precision requirements or power

calculations that justify the proposed sample size; the expected response rate; methods for assessing potential non-response bias; the protocols for data collection; and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

III. Data

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 2700–0153.

Type of Review: Extension of approval for a collection of information.

Affected Public: Federal Government; Individuals and Households; Businesses and Organization; State, Local, or Tribal Government.

Estimated Annual Number of Activities: 70.

Estimated Number of Respondents per Activity: 2,000.

Estimated Annual Responses: 140,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 16,800.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2024–06120 Filed 3–21–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Granicus Email Marketing

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB Review, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS) announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of the background questions the Agency plans to ask of people subscribing to IMLS content from *Granicus Email Marketing.* A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 21, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests 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 ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; 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).

FOR FURTHER INFORMATION CONTACT: Erica Jaros, Communications Specialist, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Jaros can be reached by telephone at 202–653–4701, or by email at *ejaros@imls.gov.* Persons who are deaf or hard of hearing (TTY users) may contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes the clearance of background questions the Agency plans to ask of people subscribing to IMLS content from *Granicus Email Marketing.* As noted in the 60-day notice, IMLS will be asking email subscribers to provide information on their type of affiliated institution, their role or position, and if they have access to grant application resources. This one-time inquiry will help facilitate the distribution of the appropriate content to IMLS email subscribers.

The 60-day Notice was published in the **Federal Register** on December 18,

2023 (88 FR 874610 (Document Number 2023–27695). We received no comments under this Notice.

Agency: Institute of Museum and Library Services.

Title: Granicus Email Marketing.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Respondents/Affected Public: Museum staff, library staff, State Library Administrative Agencies, industry professional associations, and the general public.

Total Number of Respondents: 23,750.

Frequency of Response: Once per request.

Average Minutes per Response: Less than 5 minutes.

Total Estimated Annual Burden Hours: 1,900.

Total Annual Cost Burden: $59,122.

Total Annual Federal Costs: $0.

Dated: March 18, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–06086 Filed 3–21–24; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 25, and April 1, 8, 15, 22, 29, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of March 25, 2024

There are no meetings scheduled for the week of March 25, 2024.

Week of April 1, 2024—Tentative

There are no meetings scheduled for the week of April 1, 2024.

Week of April 8, 2024—Tentative

Tuesday, April 9, 2024

10 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: The meeting will be held in the Commissioners' Hearing 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 April 15, 2024—Tentative

There are no meetings scheduled for the week of April 15, 2024.

Week of April 22, 2024—Tentative

Tuesday, April 23, 2024

9 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Haile Lindsay: 301–415–0616)

Additional Information: The meeting will be held in the Commissioners' Hearing 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 April 29, 2024—Tentative

There are no meetings scheduled for the week of April 29, 2024.

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: March 20, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–06280 Filed 3–20–24; 4:15 pm]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before April 22, 2024.

ADDRESSES: Comments should be addressed to James Olin, FOIA/Privacy Act Officer. James Olin can be contacted by email at *pcfr@peacecorps.gov* or by telephone at (202) 692–2507. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: James Olin, Peace Corps, at *pcfr@peacecorps.gov* or by telephone at (202) 692–2507.

SUPPLEMENTARY INFORMATION:

Title: Peace Corps Returned Volunteer Impact Survey.

OMB Number: 0420–0569.

Type of Request: Reapproval.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. *Number of respondents:* 966.

b. *Frequency of response:* 1 time.

c. *Completion time:* 15 minutes.

d. *Annual burden hours:* 242 hours.

General Description of Collection: Information will be collected from a sample of Returned Peace Corps Volunteers (RPCVs) through an online survey that will be administered by the Peace Corps. As mandated by the Sam Farr and Nick Castle Peace Corps Reform Act of 2018 (22 U.S.C. 2501; Pub. L. 115–256, section 1(a), Oct. 9, 2018, 132 Stat. 3650), the Peace Corps will conduct the survey to assess the impact of the Peace Corps on the RPCV, including the RPCV's well-being, career, civic engagement, and commitment to public service. By measuring and documenting such impact, the agency will have data that allows it to assess the continuing impact of the Peace Corps on American society, through the lives and careers that Peace Corps

Volunteers build after they return to the United States from Peace Corps service. The online survey was previously administered in 2020 and 2022. Peace Corps is seeking approval to administer the survey to a new subset of RPCVs in Fall 2024.

Request for Comment: The Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on March 19, 2024.

James Olin,

FOIA/Privacy Act Officer.

[FR Doc. 2024–06089 Filed 3–21–24; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–208 and CP2024–214]

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:* March 26, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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).:* MC2024–208 and CP2024–214; *Filing Title:* USPS Request to Add Priority Mail & Ground Advantage Contract 202 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 18, 2024; *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:* March 26, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–06121 Filed 3–21–24; 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).

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: U.S. Postal Service®.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service® (USPS®) is proposing to revise a Customer Privacy Act Systems of Records (SOR). These modifications are being made to extend the availability of identity verification services to government agencies.

DATES: These revisions will become effective without further notice on April 22, 2024 unless responses to comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*uspsprivacyfedregnotice@usps.gov*). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *uspsprivacyfedregnotice@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service has determined that Customer Privacy Act System of Records USPS 910.000 Identity and Document Verification Services, should be revised to extend the availability of identity verification services to government agencies.

I. Background

The Postal Service seeks to expand their ability to provide identification verification services to other government agencies. The Postal Service will therefore leverage its existing

identity verification processes and controls, combined with existing and new identity validation documents, to further support government agencies in preventing and detecting fraud, increasing security, and providing stronger validation efforts as they fulfill their obligations to the American people.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service will modify USPS 910.000 Identity and Document Verification Services as follows in order to expand its services:

- One new purpose, 22.
- One new Category of Records, 13.

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions to this SOR has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this modified system of records to have any adverse effect on individual privacy rights. Accordingly, for the reasons stated above, the Postal Service proposes revisions to this system of records. SOR 910.000 Identity and Document Verification is provided below in its entirety.

SYSTEM NAME AND NUMBER:

USPS 910.000, Identity and Document Verification Services.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Marketing, Headquarters; Integrated Business Solutions Services Centers; and contractor sites.

SYSTEM MANAGER(S):

Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1500.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404, and 411.

PURPOSE(S) OF THE SYSTEM:

1. To provide services related to identity and document verification services.
2. To issue and manage public key certificates, user registration, email addresses, and/or electronic postmarks.
3. To provide secure mailing services.
4. To protect business and personal communications.
5. To enhance personal identity and privacy protections.
6. To improve the customer experience and facilitate the provision of accurate and reliable delivery information.
7. To identify, prevent, or mitigate the effects of fraudulent transactions.
8. To support other Federal Government Agencies by providing authorized services.
9. To ensure the quality and integrity of records.
10. To enhance the customer experience by improving the security of Change-of-Address (COA) and Hold Mail processes, along with other products, services and features that require identity proofing and document verification.
11. To protect USPS customers from becoming potential victims of mail fraud and identity theft.
12. To identify and mitigate potential fraud in the COA and Hold Mail processes, along with other products, services and features that require identity proofing and document verification.
13. To verify a customer's identity when applying for COA and Hold Mail services, along with other products, services and features that require identity proofing and document verification.
14. To provide an audit trail for COA and Hold Mail requests (linked to the identity of the submitter).
15. To enhance remote identity proofing with a Phone Verification and One-Time Passcode solution.
16. To enhance remote identity proofing, improve fraud detection and customer's ability to complete identity proofing online with a Device Reputation Remote Identity Verification solution.
17. To verify a customer's Identity using methods and Identity Proofing standards that voluntarily align with NIST Special Publication 800.63 and support other Federal Agency partner security requirements.
18. To enhance In-Person identity proofing, improve Identity Document fraud detection and enable a customer to successfully complete identity proofing activities required for access to Postal Service products, services and features.
19. To enhance In-Person identity proofing, improve Identity Document fraud detection and enable a customer to successfully complete identity proofing activities as required by partnering Federal Agencies to authorize or allow individual customer access to a privilege, system, or role.
20. To facilitate the In-Person enrollment process for the Informed Delivery® feature.
21. To provide customers with the option to voluntarily scan the barcode on the back of government issued IDs to capture name and address information that will be used to confirm eligibility and prefill information collected during the In-Person Informed Delivery enrollment process.
22. To provide identity verification documents to United States government agencies and third parties, with customer consent, for validation and security.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who apply for identity and document verification services.
2. Customers who may require identity verification for Postal products, services and features.
3. USPS customers who sign-up, register or enroll to participate as users in programs, request features, or obtain products and/or services that require document or identity verification.
4. Individual applicants and users that require identity verification or document verification services furnished by the Postal Service in cooperation with other Government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Name, address, customer ID(s), telephone number, text message number and carrier, mail and email address, date of birth, place of birth, company name, title, role, and employment status.
2. *Customer preference information:* Preferred means of contact.
3. *Authorized User Information:* Names and contact information of users who are authorized to have access to data.
4. *Verification and payment information:* Credit or debit card information or other account number, government issued ID type and number, verification question and answer, and payment confirmation code. (Note: Social Security Number and credit or debit card information may be collected, but not stored, in order to verify ID.)
5. *Biometric information:* Fingerprint, photograph, height, weight, and iris scans. (Note: Information may be collected, secured, and returned to customer or third parties at the request of the customer, but not stored.)
6. *Digital certificate information:* Customer's public key(s), certificate serial numbers, distinguished name, effective dates of authorized certificates, certificate algorithm, date of revocation or expiration of certificate, and USPS-authorized digital signature.

7. *Online user information:* Device identification, device reputation risk and confidence scores.

8. *Transaction information:* Clerk signature; transaction type, date and time, location, source of transaction; product use and inquiries; Change of Address (COA) and Hold Mail transactional data.

9. *Electronic information:* Information related to encrypted or hashed documents.

10. *Recipient information:* Electronic signature ID, electronic signature image, electronic signature expiration date, and timestamp.

11. *In-Person Proofing and Enhanced Identity Verification Attributes:* Contents of Valid Identification (ID) Documents; High resolution images of front and back of ID documents, bar code on ID Document and the content of displayed and encoded fields on ID documents that may be collected and stored in order to facilitate security validation and Identity Proofing of an applicant, participant or customer's ID; Facial Image; Name, Address, and Unique ID Document number; Birthdate, Eye Color, Height and Weight; Signature; Organ donation preference.

12. *Strong ID Documents used for In-Person Identity Proofing:* Photo ID, unique ID Number and the name of the Individual being identified; Passports, Passport cards; State ID Cards, State Driver's Licenses: Uniformed Service ID's, and Government ID documents.

13. *Fair ID Documents used for In-Person Identity Proofing:* Residential Lease, Real Estate Deed of Trust, Voter Registration Card, Vehicle Registration Card, Home Insurance Policy Documents, Vehicle Insurance Policy Documents.

RECORD SOURCE CATEGORIES:

Individual Customers, Users, Participants and Applicants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By customer name, customer ID(s), distinguished name, certificate serial number, receipt number, transaction date, and email addresses.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records related to Pending Public Key Certificate Application Files are added as received to an electronic database, moved to the authorized certificate file when they are updated with the required data, and records not updated within 90 days from the date of receipt are destroyed.

2. Records related to the Public Key Certificate Directory are retained in an electronic database, are consistently updated, and records are destroyed as they are superseded or deleted.

3. Records related to the Authorized Public Key Certificate Master File are retained in an electronic database for the life of the authorized certificate.

4. When the certificate is revoked, it is moved to the certificate revocation file.

5. The Public Key Certificate Revocation List is cut off at the end of each calendar year and records are retained 30 years from the date of cutoff. Records may be retained longer with customer consent or request.

6. Other records in this system are retained 7 years, unless retained longer by request of the customer.

7. Records related to electronic signatures are retained in an electronic database for 3 years.

8. Other categories of records are retained for a period of up to 30 days.

9. Driver's License data will be retained for 5 years.

10. COA and Hold Mail transactional data will be retained for 5 years.

11. Records related to Phone Verification/One-Time Passcode and Device Reputation assessment will be retained for 7 years.

12. Records collected for Identity Proofing at the Identity Assurance Level 2 (IAL–2), including ID document images, Identity Verification Attributes, and associated data will be retained up to 5 years, or as stipulated within Interagency Agreements (IAAs) with partnering Federal Agencies. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals who need the information to perform their job and whose official duties require such access.

Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

Key pairs are protected against cryptanalysis by encrypting the private key and by using a shared secret algorithm to protect the encryption key, and the certificate authority key is stored in a separate, tamperproof, hardware device. Activities are audited, and archived information is protected from corruption, deletion, and modification. For authentication services and electronic postmark, electronic data is transmitted via secure socket layer (SSL) encryption to a secured data center. Computer media are stored within a secured, locked room within the facility. Access to the database is limited to the system administrator, database administrator, and designated support personnel. Paper forms are stored within a secured area within locked cabinets.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, email, and other identifying information.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

December 15, 2021; 86 FR 71294; March 16, 2020, 85 FR 14982; December 13, 2018, 83 FR 64164; December 22, 2017, 82 FR 60776; August 29, 2014, 79

FR 51627; October 24, 2011, 76 FR 65756; April 29, 2005, 70 FR 22516.

Christopher Doyle,

Attorney, Ethics and Compliance.

[FR Doc. 2024–06108 Filed 3–21–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the SEC–NASAA–Georgia Secretary of State Joint Investor Roundtables on Wednesday and Thursday, March 27, and 28, 2024. The events will begin at 10 a.m. (ET) and will be open to the public.

PLACE: The meeting will be conducted in-person at: Wednesday, March 27, 2024, University of North Georgia, Mike Cottrell College of Business, 265 S Chestatee St., Dahlonega, GA 30597, 10 a.m. to 4:30 p.m. (EST) and Thursday, March 28, 2024, Dalton State College, Wright School of Business, 650 College Dr., Dalton, GA 30720, 10 a.m. to 4:30 p.m. (EST) and by remote means. Members of the public may attend in-person or watch the webcast of the events beginning at 1 p.m. each day on the Commission's website at *www.sec.gov.*

STATUS: This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: These public roundtables will be an opportunity for investors, regulators, and members of the investment community to share their experiences with SEC staff and discuss topics that are important to them, such as securities fraud and feedback on SEC rulemaking. These events are designed to listen to investors and better understand their needs in future policy and practice. Questions and feedback may be submitted in advance to *InvestorEngagement@sec.gov.*

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 20, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–06296 Filed 3–20–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 6576/March 18, 2024]

Notice of Intention To Cancel Registration Pursuant to Section 203(h) of the Investment Advisers Act of 1940

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of Hennii Investment Advisory Services, Inc., File No. 801–120518, hereinafter referred to as the ''*registrant.*''

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.

The registrant, since March of 2021, has not filed a Form ADV amendment with the Commission as required by rule 204–1 under the Act and appears to be no longer in business as an investment adviser or is otherwise not engaged in business as an investment adviser.[1] Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer in existence and is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Notice is also given that any interested person may, by April 12, 2024, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication should be emailed to the Commission's Secretary at *Secretarys-Office@sec.gov.*

At any time after April 12, 2024, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Asaf Barouk, Senior Counsel at 202–551–6999; SEC, Division of Investment Management, Office of Chief Counsel, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06052 Filed 3–21–24; 8:45 am]

BILLING CODE 8011–01–P

[1] Rule 204–1 under the Act requires any adviser that is required to complete Form ADV to amend the form at least annually and to submit the amendments electronically through the Investment Adviser Registration Depository.

[2] 17 CFR 200.30–5(e)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99762; File No. SR–CBOE–2024–013]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2024, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective March 7, 2024. Specifically, the Exchange proposes to make clarifying changes to the ''Regulatory Fees'' section. Under the Exchange's Regulatory Fees, the Exchange charges a fee to TPHs, including Designated Primary Market-Makers [3] (''DPMs''), that are subject to Rule 15c3–1 under the Exchange Act (the ''Net Capital Rule'') [4] and for which the Exchange has been assigned as the Designated Examining Authority (''DEA''), called the ''DPM's and Firm Designated Examining Authority Fee.'' The Exchange currently charges TPHs subject to this fee $0.60 per $1,000 of gross revenue as reported on quarterly FOCUS reports filed by such TPHs (excluding commodity commission revenue). In addition, this fee is subject to a monthly minimum fee of $1,500 per month for Clearing TPHs and $400 for non-Clearing TPHs.

The Exchange first proposes to remove ''DPM'' from the fee title, as such fee is not assessed to TPHs because of their DPM capacity. As stated above, the Firm DEA Fee is assessed to all TPHs that are subject to the Net Capital Rule and for which the Exchange has been assigned as the DEA. While this may include DPMs, it does not necessarily include all DPMs; thus, the Exchange proposes to remove DPM from the fee title, to avoid potential confusion and clarify the purpose and application of the fee.

Further, the Exchange proposes to add clarifying language regarding the calculation and billing of the Firm DEA Fee to add further transparency to the Fees Schedule. The Firm DEA Fee is calculated by the Exchange and assessed to TPHs, as applicable, on a quarterly basis. The Exchange proposes to add language stating that if the Exchange is the DEA for a TPH for less than all three months of the relevant quarter, the Firm DEA Fee for the TPH for that quarter is prorated based on the number of months in the quarter in which the Exchange acted as DEA for the TPH.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed rule changes to the Fees Schedule do not change any fees charged pursuant to the Firm DEA Fee, but rather are clarifying in nature, and thus, the fee will continue to be reasonable and equitable, and uniformly applied, as applicable, to all TPHs that are subject to the Net Capital Rule and for which the Exchange has been assigned as the DEA. The Exchange believes the proposed rule changes remove impediments to and perfect the mechanism of a free and open market and national market system as they add clarity, mitigate any potential confusion in connection with the application of these fees or billing in connection with these fees, and facilitate better understanding of the Fees Schedule for all market participants, which ultimately protects investors.

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. As indicated above, the proposed changes to the Fees Schedule clarify language regarding the Firm DEA Fee. As the Exchange is not changing the fee itself, but merely clarifying who the fee is assessed to and how the fee is billed, the Exchange believes the proposed clarifying rule amendments do not substantively change the Firm DEA Fee or the manner in which it currently applies to market participants, as applicable. The proposed changes are not competitive in nature and are merely intended to clean up the Fees Schedule in order to provide additional clarity and facilitate better understanding of the Fees Schedule for all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the

[3] *See* Exchange Rule 1.1, which defines a ''Designated Primary Market-Maker.''

[4] 17 CFR 240.15c3–1.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78f(b)(4).

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)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to make clarifying changes to its Fee Schedule. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[13]

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)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2024–013 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–CBOE–2024–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–013 and should be submitted on or before April 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06072 Filed 3–21–24; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, 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.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99761; File No. SR–NYSENAT–2024–08]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31

March 18, 2024.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 6, 2024, NYSE National, Inc. (''NYSE National'' 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 7.31 to provide for the use of Day ISO Reserve Orders and make other 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 Rule 7.31 to provide for the use of Day ISO Reserve Orders and make

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

conforming changes in Rule 7.11 (Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) and Rule 7.37 (Order Execution and Routing).

Day ISO Orders

Rule 7.31(e)(3) defines an Intermarket Sweep Order (''ISO'') as a Limit Order that does not route and meets the requirements of Rule 600(b)(38) of Regulation NMS. As described in Rules 7.31(e)(3)(A) and subparagraphs (i) and (ii) thereunder, an ISO may trade through a protected bid or offer and will not be rejected or cancelled if it would lock, cross, or be marketable against an Away Market, provided that (1) it is identified as an ISO and (2) simultaneously with its routing to the Exchange, the ETP Holder that submits the ISO also routes one or more additional Limit Orders, as necessary, to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets.

Rule 7.31(e)(3)(C) provides that an ISO designated Day (''Day ISO''), if marketable on arrival, will immediately trade with contra-side interest on the Exchange Book up to its full size and limit price. Any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time the order arrived.

Reserve Orders

Rule 7.31(d)(1) provides for Reserve Orders, which are Limit or Inside Limit Orders with a quantity of the size displayed and with a reserve quantity (''reserve interest'') of the size that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders, and the reserve interest is ranked Priority 3—Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the Exchange Book or to route to Away Markets. The working price of the reserve interest of a resting Reserve Order will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in Rule 7.31(d)(2)(A).

As described in Rule 7.31(d)(1)(A), the display quantity of a Reserve Order must be entered in round lots, and the displayed portion of a Reserve Order will be replenished when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity.

Rule 7.31(d)(1)(B) provides that each time the display quantity of a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity (each display quantity with a different working time is referred to as a ''child'' order), while the reserve interest retains the working time of the original order entry. In addition, when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time will rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity. If a Reserve Order is not routable, the replenish quantity will be assigned a display and working price consistent with the instructions for the order.

Rule 7.31(d)(1)(C) provides that a Reserve Order must be designated Day and may only be combined with a Non-Routable Limit Order or Primary Pegged Order.

Rule 7.31(d)(1)(D) provides that routable Reserve Orders will be evaluated for routing both on arrival and each time their display quantity is replenished.

Rule 7.31(d)(1)(E) provides that a request to reduce the size of a Reserve Order will cancel the reserve interest before cancelling the display quantity, and, if the Reserve Order has more than one child order, the child order with the latest working time will be cancelled first.

Rule 7.31(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of such Reserve Order will not change and the reserve interest that replenishes the display quantity will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Rule 7.31(d)(1)(F) further provides that, when the PBBO uncrosses, the display price and working price will be adjusted as provided for under Rule 7.31(e)(1) relating to Non-Routable Limit Orders or, for an ALO Order designated as Reserve, as provided for under Rule 7.31(e)(2)(E).

Day ISO Reserve Orders

The Exchange proposes to amend Rule 7.31 to provide for the use of Day ISO Reserve Orders. The proposed change is not intended to modify any current functionality, but would instead facilitate the combination of two order types currently offered by the Exchange to offer increased efficiency to ETP Holders. As proposed, Day ISO Reserve Orders would, except as otherwise noted, operate consistent with current Rule 7.31(d)(1) regarding Reserve Orders and current Rule 7.31(e)(3)(C) regarding Day ISO Orders. To allow for the use of Day ISO Reserve Orders, the Exchange first proposes to amend Rule 7.31(d)(1)(C) to include Day ISO Orders among the order types that may be designated as Reserve Orders.

The proposed change is intended to allow Day ISO Orders, as described in Rule 7.31(e)(3)(C),[4] to have a displayed quantity, along with non-displayed reserve interest, as described in Rule 7.31(d)(1). The display quantity of a Day ISO Reserve Order would be replenished as provided in Rules 7.31(d)(1)(A) and (B), except that the Exchange proposes to add new rule text to Rule 7.31(d)(1)(B)(ii), which currently provides that the replenish quantity of a non-routable Reserve Order will be assigned a display and working price consistent with the instructions for the order. Because Day ISO Reserve Orders would be non-routable but could not be replenished at their limit price given the specific requirements for ISOs (as described above),[5] the Exchange proposes to amend Rule 7.31(d)(1)(B)(ii) to specify that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order, as provided for under paragraph (e)(1) of this Rule.

As currently described in Rule 7.31(e)(3)(C), a Day ISO Reserve Order, if marketable on arrival, would immediately trade with contra-side interest on the Exchange Book up to its full size and limit price. Currently, Rule 7.31(e)(3)(C) further provides that any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. The Exchange proposes two changes to Rule 7.31(e)(3)(C) to reflect the operation of Day ISO Reserve Orders:

- The Exchange proposes to amend the second sentence of Rule

[4] The Exchange does not currently propose to allow Day ISO ALO Orders (as defined in Rule 7.31(e)(3)(D)) to be designated as Reserve Orders. Accordingly, the Exchange proposes to amend Rule 7.31(e)(3)(D) to specify that Day ISO ALOs may not be so designated.

[5] Consistent with the requirements for ISOs and the Exchange's existing rules governing Day ISOs, a Day ISO Reserve Order, as proposed, would only behave as an ISO upon arrival and would not otherwise be permitted to trade through a protected bid or offer or lock or cross an Away Market.

7.31(e)(3)(C) to specify that reserve interest of a Day ISO Reserve Order would not be displayed at its limit price because reserve interest is, by definition, non-displayed and would instead rest non-displayed on the Exchange Book at the order's limit price.

• The Exchange proposes to add new subparagraph (i) under Rule 7.31(e)(3)(C) to offer ETP Holders the ability to designate a Day ISO Reserve Order to be cancelled if, upon replenishment, it would be displayed at a price other than its limit price for any reason. The Exchange notes that it does not offer this option for Day ISOs not designated as Reserve Orders because such orders would never be displayed at a price other than their limit price. By contrast, a Day ISO Reserve Order could be repriced upon replenishment as described in Rule 7.31(d)(1)(B)(ii) (as modified by this filing to include Day ISOs designated as Reserve Orders, discussed below).

This proposed change would provide ETP Holders with increased flexibility with respect to order handling and the ability to have greater determinism regarding order processing when Day ISO Reserve Orders would be repriced to display at a price other than their limit price upon replenishment. This designation would be optional, and if not designated to cancel, Day ISO Reserve Orders would function as otherwise described in this filing. The Exchange notes that it already makes this option available for other order types and believes that offering it to Day ISO Reserve Orders would promote consistency in Exchange rules.[6]

The working price of the reserve interest of a resting Day ISO Reserve Order would be adjusted as provided for in Rule 7.31(d)(1). Rule 7.31(d)(1)(E) would also apply to requests to reduce the size of Day ISO Reserve Orders.

Rule 7.31(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of the order would not change, but the reserve interest that replenishes the display quantity would be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). When the PBBO uncrosses, the display price and working price of a Reserve Order will be adjusted as provided for under paragraph (e)(1) of this Rule relating to Non-Routable Limit Orders. The Exchange proposes to amend Rule 7.31(d)(1)(F) to provide that the rule would likewise apply to a Reserve Order that is a Day ISO. The Exchange further notes that this proposed change is consistent with the proposed change to Rule 7.31(d)(1)(B)(ii), which similarly provides that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order.

Finally, the Exchange proposes conforming changes to Rule 7.11(a)(5) and Rule 7.37(g)(2) to reflect the operation of Day ISO Reserve Orders.

Rule 7.11(a)(5) sets forth rules governing how Exchange systems will reprice or cancel buy (sell) orders that are priced or could be traded above (below) the Upper (Lower) Price Bands consistent with the Limit Up-Limit Down Plan. Rule 7.11(a)(5)(ii) currently provides that if the Price Bands move and the working price of a resting Market Order or Day ISO to buy (sell) is above (below) the updated Upper (Lower) Price Band, such orders will be cancelled. The Exchange proposes to amend Rule 7.11(a)(5)(ii) to clarify its applicability to any portion of a resting Day ISO that is designated Reserve. Thus, if the Price Bands move and the working price of any portion of a resting Day ISO Reserve Order to buy (sell) is above (below) the updated Upper (Lower) Price Band, the entirety of the Day ISO Reserve Order would be cancelled.

Rule 7.37(f)(2) describes the ISO exception to the Order Protection Rule. Rule 7.37(f)(2)(A) provides that the Exchange will accept ISOs to be executed in the Exchange Book against orders at the Exchange's best bid or best offer without regard to whether the execution would trade through another market's Protected Quotation. Rule 7.37(f)(2)(B) provides that, if an ISO is marked as ''Immediate-or-Cancel,'' any portion of the order not executed upon arrival will be automatically cancelled; if an ISO is not marked as ''Immediate-or-Cancel,'' any balance of the order will be displayed without regard to whether that display would lock or cross another market center, so long as the order complies with Rule 7.37(e)(3)(C).[7] The Exchange proposes to amend Rule 7.37(f)(2)(B) to specify that, for an ISO not marked as ''Immediate-or-Cancel,'' any displayed portion of such order would be displayed, and any non-displayed portion would remain on the Exchange Book. This proposed change is intended to clarify that the reserve interest of a Day ISO Reserve Order would not be displayed, but could, on arrival only, rest non-displayed at a price that would lock or cross another market center if the member organization has complied with Rule 7.37(e)(3)(C).

The proposed change is intended to facilitate the combined use of two existing order types available on the Exchange, thereby providing ETP Holders with enhanced flexibility, optionality, and efficiency when trading on the Exchange. The proposed change could also promote increased liquidity and trading opportunities on the Exchange, to the benefit of all market participants. The Exchange also believes the proposed change would permit the Exchange to offer functionality similar to that available on at least one other equities exchange, thereby promoting competition among equities exchanges.[8]

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the second quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it would allow for the combined use of two existing order types available on the Exchange and permit the Exchange to offer functionality similar to that already

[6] *See, e.g.,* Rules 7.31(e)(1), 7.31(e)(2), and 7.31(e)(3)(D) (permitting Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders, respectively, to be designated to cancel if they would be displayed at a price other than their limit price for any reason).

[7] Rule 7.37(e)(3)(C) provides that the prohibition against Locking and Crossing Quotations described in Rule 7.37(e)(2) does not apply when the Locking or Crossing Quotation was an Automated Quotation, and the ETP Holder displaying such Automated Quotation simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Quotation.

[8] *See, e.g.,* Nasdaq Stock Market LLC Rule 4702(b)(1)(C) (describing Price to Comply Order, which may be designated with both reserve size and as an ISO).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

available on at least one other equities exchange.[11] ETP Holders would be free to choose to use the proposed Day ISO Reserve Order type or not, and the proposed change would not otherwise impact the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, by expanding the options available to ETP Holders when trading on the Exchange and promoting increased liquidity and additional trading opportunities for all market participants.

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. In addition, as noted above, Exchange believes the proposed rule change would allow the Exchange to offer functionality already available on at least one other equities exchange [12] and thus would promote competition among equities exchanges. The Exchange also believes that, to the extent the proposed change increases opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The proposal would allow the Exchange to offer functionality similar to that already available on at least one other equities exchange.[17] ETP Holders would have the option to use the proposed Day ISO Reserve Order type, and the proposed change would not otherwise impact the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. Waiver of the operative delay would allow the Exchange to more expeditiously offer increased flexibility to ETP Holders and promote additional trading opportunities for all market participants. Therefore, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[18]

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) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSENAT–2024–08 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–2024–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSENAT–2024–08 and should be submitted on or before April 12, 2024.

[11] *See* note 8, *supra.*

[12] *See id.*

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See* note 8, *supra.*

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06070 Filed 3–21–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99758; File No. SR–NSCC–2024–001]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Liquidity Risk Management Framework and the Clearing Agency Stress Testing Framework

March 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2024, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Liquidity Risk Management Framework (''LRM Framework'') and the Clearing Agency Stress Testing Framework (Market Risk) (''ST Framework'' and, together with the LRM Framework, the ''Frameworks'') of NSCC and its affiliates, The Depository Trust Company (''DTC'') and Fixed Income Clearing Corporation (''FICC,'' and together with NSCC and DTC, the ''Clearing Agencies''), as described below. NSCC is filing the proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder,[6] as described in greater detail below.[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Rules 17Ad–22(e)(4) and (7) under the Act require the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage their credit and liquidity risks.[8] The Clearing Agencies adopted the LRM Framework to set forth the manner in which they measure, monitor and manage the liquidity risks that arise in or are borne by each of the Clearing Agencies by, for example, (1) maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the Clearing Agency in extreme but plausible market conditions, and (2) determining the amount and regularly testing the sufficiency of qualifying liquid resources by conducting stress testing of those resources.[9] In this way, the LRM Framework describes the liquidity risk management activities of each of the Clearing Agencies and how the Clearing Agencies meet the applicable requirements of Rule 17Ad–22(e)(7).[10]

The Clearing Agencies adopted the ST Framework to set forth the manner in which they identify, measure, monitor, and manage their respective credit exposures to participants and those arising from their respective payment, clearing, and settlement processes by, for example, maintaining sufficient prefunded financial resources to cover its credit exposures to each participant fully with a high degree of confidence and testing the sufficiency of those prefunded financial resources through stress testing.[11] In this way, the ST Framework describes the stress testing activities of each of the Clearing Agencies and how the Clearing Agencies meet the applicable requirements of Rule 17Ad–22(e)(4) under the Act.[12]

Proposed Changes

The Clearing Agencies propose to make clarifying and organizational changes to the LRM Framework and ST Framework designed to improve the accuracy and clarity of the documents. Specifically, the proposed changes would (i) clarify in the LRM Framework the resources currently available to FICC and NSCC to meet settlement obligations and foreseeable liquidity shortfalls; (ii) clarify in the LRM Framework the Clearing Agencies' practices for reporting and escalating liquidity risk tolerance threshold breaches; (iii) relocate the governance and escalation requirements related to certain liquidity risk management processes from the ST Framework to the LRM Framework; and (iv) make other non-substantive clarifying, organizational, and cleanup changes to the LRM Framework. The proposed changes are described in detail below.

Proposed Clarifications to Description of FICC and NSCC Liquidity Resources

The LRM Framework describes how the Clearing Agencies would address foreseeable liquidity shortfalls that would not be covered by their existing liquid resources. In the case of FICC, the LRM Framework provides, among other things, that the FICC Government Securities Division (''GSD'') and Mortgage-Backed Securities Division (''MBSD'') would look for additional repo counterparties beyond their respective existing master repurchase agreements and that MBSD may seek Members to provide additional repo capacity beyond their Capped Contingency Liquidity Facility

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] Capitalized terms not defined herein shall have the meaning assigned to such terms in each of the Clearing Agencies' respective Rules, *available at www.dtcc.com/legal/rules-and-procedures.*

[8] *See* 17 CFR 240.17Ad–22(e)(4) and (7).

[9] *See* Securities Exchange Act Release No. 82377 (Dec. 21, 2017), 82 FR 61617 (Dec. 28, 2017) (File Nos. SR–DTC–2017–004; SR–FICC–2017–008; SR–NSCC–2017–005).

[10] 17 CFR 240.17Ad–22(e)(7).

[11] *See* Securities Exchange Act Release No. 82368 (Dec. 19, 2017), 82 FR 61082 (Dec. 26, 2017) (SR–DTC–2017–005; SR–FICC–2017–009; SR–NSCC–2017–006).

[12] 17 CFR 240.17Ad–22(e)(4).

(''CCLF'') requirements.[13] With respect to NSCC, the LRM Framework provides that NSCC may look to utilize, among other things, certain uncommitted repurchase arrangements (*e.g.,* stock loans or equity repos) or other uncommitted credit facilities to address foreseeable liquidity shortfalls. The Clearing Agencies propose to revise these statements and replace them with more accurate summaries of the types of liquidity resources available to FICC and NSCC.

The Clearing Agencies would modify the LRM Framework to state that FICC may use Clearing Fund deposits to meet its settlement obligations, as permitted under GSD Rule 4 and MBSD Rule 4,[14] either through direct use of cash deposits to the Clearing Funds or through the pledge or rehypothecation of pledged eligible Clearing Fund securities. The LRM Framework would also be revised to clarify that FICC could also address a liquidity shortfall by accessing a short-term financial commercial arrangement, such as uncommitted Master Repurchase Agreements maintained by FICC and which do not constitute qualifying liquid resources, or by utilizing its general corporate funds to the extent such funds exceed amounts needed to meet FICC's regulatory capital requirements. In addition, the Clearing Agencies would further clarify that FICC could also address a liquidity shortfall by accessing its existing repo counterparties, even if such funds may not be available to meet same-day settlement obligations. The Clearing Agencies would also delete a footnote containing a cross-reference to a previously deleted footnote.

The Clearing Agencies also propose to revise the LRM Framework to remove references to certain specific uncommitted resources of NSCC, such as stock loans, equity repos, and other uncommitted credit facilities, which are no longer available to NSCC and for which NSCC no longer maintains the necessary agreements. This would be replaced with a more general clarification that all of the Clearing Agencies may seek to address unforeseen liquidity shortfalls in excess of qualifying liquid resources through uncommitted arrangements. The Clearing Agencies would also update the LRM Framework to use more accurate terminology and descriptions of NSCC's senior note issuance program. These proposed changes are not intended to reflect actual substantive changes to the senior note issuance program.

The Clearing Agencies believe the proposed changes would enhance the LRM Framework by more precisely describing the existing tools and resources that FICC and NSCC may utilize to address foreseeable liquidity shortfalls in compliance with Rule 17Ad–22(e)(7)(viii) under the Act.[15]

Proposed Clarifications to Liquidity Risk Tolerances

The LRM Framework describes the manner in which the liquidity risks of the Clearing Agencies are assessed and escalated through liquidity risk management controls that include a statement of risk tolerances that are specific to liquidity risk (''Liquidity Risk Tolerance Statement''). The Clearing Agencies propose to revise the LRM Framework to provide additional clarity and accuracy around their existing processes for reporting and escalating liquidity risk tolerances.

The Clearing Agencies would revise the LRM Framework to remove certain statements regarding the reporting of risk tolerances and instead clarify that liquidity risk tolerance thresholds are communicated to relevant personnel and the management risk committee as prescribed by the Liquidity Risk Tolerance Statement of the Clearing Agencies' Corporate Risk Management Policy, with necessary escalation and analyses performed in accordance with a newly proposed section of the LRM Framework concerning liquidity risk governance and escalations (described in further detail below). This would include the removal of an outdated statement concerning potential responses to risk tolerance threshold reporting (*e.g.,* responses such as risk avoidance, risk mitigation, risk acceptance), and instead focus on the required escalations set forth in the Liquidity Risk Tolerance Statements to be more consistent with the process as described in the Corporate Risk Management Policy. The Clearing Agencies would also remove specific references to the Stress Testing Team in communicating liquidity risk tolerance thresholds because this task may be performed by staff within the overall Liquidity Risk and Stress Testing function of DTCC. In addition, the LRM Framework would be revised to clarify that the liquidity risk profile prepared by the Operational Risk Management department (''ORM'') is reviewed with senior management in the Group Chief Risk Office (and not just within the Liquidity Risk Management team) and to update the name of the risk profile used by ORM to monitor liquidity risk management. The Clearing Agencies believe the proposed changes would enhance the LRM Framework by improving the accuracy and clarity of the document as it relates to liquidity risk tolerance reporting.

Proposed Clarifications to Liquidity Risk Governance and Escalation

On November 17, 2022, the Commission approved a proposed rule change by the Clearing Agencies to amend the ST Framework and LRM Framework to, among other things, relocate certain descriptions of the Clearing Agencies' liquidity stress testing activities from the LRM Framework to the ST Framework.[16] This included certain requirements related to liquidity risk escalations, and in particular, the process for escalating liquidity shortfalls. The Clearing Agencies now propose to add a new section to the LRM Framework to relocate requirements related to liquidity risk governance and the escalation of liquidity shortfalls back into the LRM Framework because these activities and processes are primarily driven the Clearing Agencies' Liquidity Risk Management team.

The Clearing Agencies propose to add a new Liquidity Risk Governance sub-section to the LRM Framework, which would contain the same information as the Stress Test Governance section of the ST Framework but with modifications to refer to liquidity risk policies, procedures and risk tolerance statements rather than stress testing policies, procedures and risk tolerance statements. Additionally, the Clearing Agencies would relocate the Escalation of Liquidity Shortfalls section of the ST Framework to the LRM Framework with certain modifications and drafting clarifications. Specifically, the Clearing Agencies would revise and clarify the manner in which liquidity risk tolerance threshold breaches and liquidity shortfalls are identified, reported and escalated by stating that liquidity risk tolerance threshold breaches and liquidity shortfalls identified through the daily liquidity studies are reported and escalated in accordance with the Clearing Agencies' Liquidity Risk Tolerance Statement. The Clearing Agencies would also clarify that the Liquidity Risk Management team performs the daily analysis of any calculated liquidity shortfalls. In

[13] *See* FICC GSD Rule 22A, Section 2a and FICC MBSD Rule 17, Section 2a, *supra* note 7.

[14] *See supra* note 7.

[15] 17 CFR 240.17Ad–22(e)(7)(viii).

[16] *See* Securities Exchange Act Release No. 96345 (Nov. 17, 2022), 87 FR 71714 (Nov. 23, 2022) (File Nos. SR–DTC–2022–006; SR–FICC–2022–004; SR–NSCC–2022–006).

addition, the Clearing Agencies would clarify that the management risk committee does not directly evaluate the adequacy of liquidity resources as a first line function but rather reviews management evaluations and recommendations related to the adequacy of such resources, which may include adjusting the CCP's liquidity risk management methodology, model parameters, and any other relevant aspect of its liquidity risk management framework, or otherwise supplementing liquid resources. The ST Framework would also be revised to state that liquidity risk tolerance and liquidity shortfall reporting and escalations are governed by the LRM Framework.

Other Clarifying, Cleanup and Organizational Changes

Finally, the Clearing Agencies propose other clarifying, cleanup and organizational changes to the LRM Framework to improve the accuracy and clarity of the document. The Clearing Agencies would relocate the definition of ''qualifying liquid resources'' from Section 5 of the LRM Framework to the Glossary of Key Terms in Section 2, with minor modifications to associated footnotes and citations, so that this term is clearly defined before its first usage within the LRM Framework. The Clearing Agencies would also update the Glossary of Key Terms to refer to the DTCC Treasury ''department'' rather than DTCC Treasury ''group'' to align with other references to the DTCC Treasury department throughout the LRM Framework and remove the defined term ''Stress Testing Team'' because specific responsibilities of this team would no longer be described in LRM Framework as they are covered in the ST Framework.

In addition, Clearing Agencies would make several cleanup changes in the Liquidity Risk Measurement section of the LRM Framework to remove an outdated reference to previously removed sections of the LRM Framework, refer to the new Liquidity Risk Governance and Escalation Procedures section of the LRM Framework, and remove a specific reference to the Stress Test Team (the responsibilities of which are addressed in the ST Framework).

Finally, the Clearing Agencies would make a minor clarification in the LRM Framework regarding the annual testing of certain uncommitted liquidity providers, which are non-qualifying liquid resources of FICC.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act[17] and Rule 17Ad–22(e)(7) under the Act[18] for the reasons set forth below.

Section 17A(b)(3)(F) of the Act[19] requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The proposed changes would improve the accuracy and clarity of the Frameworks, and specifically the LRM Framework, by (i) clarifying in the LRM Framework the resources currently available to FICC and NSCC to meet settlement obligations and liquidity shortfalls; (ii) clarifying in the LRM Framework the Clearing Agencies' practices for reporting and escalating liquidity risk tolerance thresholds; (iii) relocating the governance and escalation requirements related to certain liquidity risk management processes from the ST Framework to the LRM Framework; and (iv) making other non-substantive clarifying, organizational and cleanup changes to the LRM Framework. The LRM Framework and the policies and procedures that support the LRM Framework help assure that each Clearing Agency can effectively measure, monitor, and manage their liquidity risks to promote the timely settlement of securities transactions. The proposed changes would enhance the LRM Framework by improving the accuracy and clarity of the descriptions of key aspects of the Clearing Agencies' liquidity risk management processes, thereby facilitating the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(7) under the Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[20] As discussed above, the LRM Framework and the policies and procedures that support the LRM Framework help assure that each Clearing Agency can effectively measure, monitor, and manage their liquidity risks. The Clearing Agencies believe that by improving the accuracy and clarity of the descriptions of key aspects of the Clearing Agencies' liquidity risk management processes, the proposed changes would facilitate the maintenance of written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risks as required by Rule 17Ad–22(e)(7) under the Act.

In addition, Rule 17Ad–22(e)(7)(viii) under the Act specifically requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by the covered clearing agency's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.[21] The Clearing Agencies believe that including additional clarity and specificity in the LRM Framework concerning the types of liquidity resources available to FICC and NSCC to address foreseeable liquidity shortfalls would further promote compliance with Rule 17Ad–22(e)(7)(viii) under the Act.

For these reasons, the Clearing Agencies believe the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[22] and Rule 17Ad–22(e)(7) thereunder.[23]

(B) Clearing Agency's Statement on Burden on Competition

The proposed changes would enhance the Frameworks, and specifically the LRM Framework, by providing additional clarity and accuracy concerning the Clearing Agencies' existing liquidity risk management processes. The Frameworks, and the proposed rule changes described herein, would not advantage or disadvantage any particular participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. The Clearing Agencies therefore do not believe that the proposed rule change would have any impact, or impose any burden, on competition.

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(7).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] *See* 17 CFR 240.17Ad–22(e)(7).

[21] *See* 17 CFR 240.17Ad–22(e)(7)(viii).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(7).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25]

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.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2024–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2024–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–NSCC–2024–001 and should be submitted on or before April 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06071 Filed 3–21–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99760; File No. SR–NYSEARCA–2024–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31–E

March 18, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 14, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31–E to provide for the use of Day ISO Reserve Orders and make other 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.

[26] 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.

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 7.31–E to provide for the use of Day ISO Reserve Orders and make conforming changes in Rule 7.11–E (Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) and Rule 7.37–E (Order Execution and Routing).

Day ISO Orders

Rule 7.31–E(e)(3) defines an Intermarket Sweep Order (''ISO'') as a Limit Order that does not route and meets the requirements of Rule 600(b)(38) of Regulation NMS. As described in Rules 7.31–E(e)(3)(A) and subparagraphs (i) and (ii) thereunder, an ISO may trade through a protected bid or offer and will not be rejected or cancelled if it would lock, cross, or be marketable against an Away Market, provided that (1) it is identified as an ISO and (2) simultaneously with its routing to the Exchange, the ETP Holder that submits the ISO also routes one or more additional Limit Orders, as necessary, to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets.

Rule 7.31–E(e)(3)(C) provides that an ISO designated Day (''Day ISO''), if marketable on arrival, will immediately trade with contra-side interest on the NYSE Arca Book up to its full size and limit price. Any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time the order arrived.

Reserve Orders

Rule 7.31–E(d)(1) provides for Reserve Orders, which are Limit or Inside Limit Orders with a quantity of the size displayed and with a reserve quantity (''reserve interest'') of the size that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders, and the reserve interest is ranked Priority 3—Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the NYSE Arca Book or to route to Away Markets. The working price of the reserve interest of a resting Reserve Order will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in Rule 7.31–E(d)(2)(A).

As described in Rule 7.31–E(d)(1)(A), the display quantity of a Reserve Order must be entered in round lots, and the displayed portion of a Reserve Order will be replenished when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity.

Rule 7.31–E(d)(1)(B) provides that each time the display quantity of a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity (each display quantity with a different working time is referred to as a ''child'' order), while the reserve interest retains the working time of the original order entry. In addition, when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time will rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity. If a Reserve Order is not routable, the replenish quantity will be assigned a display and working price consistent with the instructions for the order.

Rule 7.31–E(d)(1)(C) provides that a Reserve Order must be designated Day and may only be combined with a Non-Routable Limit Order or Primary Pegged Order.

Rule 7.31–E(d)(1)(D) provides that routable Reserve Orders will be evaluated for routing both on arrival and each time their display quantity is replenished.

Rule 7.31–E(d)(1)(E) provides that a request to reduce the size of a Reserve Order will cancel the reserve interest before cancelling the display quantity, and, if the Reserve Order has more than one child order, the child order with the latest working time will be cancelled first.

Rule 7.31–E(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of such Reserve Order will not change and the reserve interest that replenishes the display quantity will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Rule 7.31–E(d)(1)(F) further provides that, when the PBBO uncrosses, the display price and working price will be adjusted as provided for under Rule 7.31–E(e)(1) relating to Non-Routable Limit Orders or, for an ALO Order designated as Reserve, as provided for under Rule 7.31–E(e)(2)(E).

Day ISO Reserve Orders

The Exchange proposes to amend Rule 7.31–E to provide for the use of Day ISO Reserve Orders. The proposed change is not intended to modify any current functionality, but would instead facilitate the combination of two order types currently offered by the Exchange to offer increased efficiency to ETP Holders. As proposed, Day ISO Reserve Orders would, except as otherwise noted, operate consistent with current Rule 7.31–E(d)(1) regarding Reserve Orders and current Rule 7.31–E(e)(3)(C) regarding Day ISO Orders. To allow for the use of Day ISO Reserve Orders, the Exchange first proposes to amend Rule 7.31–E(d)(1)(C) to include Day ISO Orders among the order types that may be designated as Reserve Orders.

The proposed change is intended to allow Day ISO Orders, as described in Rule 7.31–E(e)(3)(C),[4] to have a displayed quantity, along with non-displayed reserve interest, as described in Rule 7.31–E(d)(1). The display quantity of a Day ISO Reserve Order would be replenished as provided in Rules 7.31–E(d)(1)(A) and (B), except that the Exchange proposes to add new rule text to Rule 7.31–E(d)(1)(B)(ii), which currently provides that the replenish quantity of a non-routable Reserve Order will be assigned a display and working price consistent with the instructions for the order. Because Day ISO Reserve Orders would be non-routable but could not be replenished at their limit price given the specific requirements for ISOs (as described above),[5] the Exchange proposes to amend Rule 7.31–E(d)(1)(B)(ii) to specify that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order, as provided for under paragraph (e)(1) of this Rule.

As currently described in Rule 7.31–E(e)(3)(C), a Day ISO Reserve Order, if marketable on arrival, would immediately trade with contra-side interest on the NYSE Arca Book up to its full size and limit price. Currently, Rule 7.31–E(e)(3)(C) further provides

[4] The Exchange does not currently propose to allow Day ISO ALO Orders (as defined in Rule 7.31–E(e)(3)(D)) to be designated as Reserve Orders. Accordingly, the Exchange proposes to amend Rule 7.31–E(e)(3)(D) to specify that Day ISO ALOs may not be so designated.

[5] Consistent with the requirements for ISOs and the Exchange's existing rules governing Day ISOs, a Day ISO Reserve Order, as proposed, would only behave as an ISO upon arrival and would not otherwise be permitted to trade through a protected bid or offer or lock or cross an Away Market.

that any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. The Exchange proposes two changes to Rule 7.31–E(e)(3)(C) to reflect the operation of Day ISO Reserve Orders:

- The Exchange proposes to amend the second sentence of Rule 7.31–E(e)(3)(C) to specify that reserve interest of a Day ISO Reserve Order would not be displayed at its limit price because reserve interest is, by definition, non-displayed and would instead rest non-displayed on the NYSE Arca Book at the order's limit price.
- The Exchange proposes to add new subparagraph (i) under Rule 7.31–E(e)(3)(C) to offer ETP Holders the ability to designate a Day ISO Reserve Order to be cancelled if, upon replenishment, it would be displayed at a price other than its limit price for any reason. The Exchange notes that it does not offer this option for Day ISOs not designated as Reserve Orders because such orders would never be displayed at a price other than their limit price. By contrast, a Day ISO Reserve Order could be repriced upon replenishment as described in Rule 7.31–E(d)(1)(B)(ii) (as modified by this filing to include Day ISOs designated as Reserve Orders, discussed below).

This proposed change would provide ETP Holders with increased flexibility with respect to order handling and the ability to have greater determinism regarding order processing when Day ISO Reserve Orders would be repriced to display at a price other than their limit price upon replenishment. This designation would be optional, and if not designated to cancel, Day ISO Reserve Orders would function as otherwise described in this filing. The Exchange notes that it already makes this option available for other order types and believes that offering it to Day ISO Reserve Orders would promote consistency in Exchange rules.[6]

The working price of the reserve interest of a resting Day ISO Reserve Order would be adjusted as provided for in Rule 7.31–E(d)(1). Rule 7.31–E(d)(1)(E) would also apply to requests to reduce the size of Day ISO Reserve Orders.

Rule 7.31–E(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of the order would not change, but the reserve interest that replenishes the display quantity would be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). When the PBBO uncrosses, the display price and working price of a Reserve Order will be adjusted as provided for under paragraph (e)(1) of this Rule relating to Non-Routable Limit Orders. The Exchange proposes to amend Rule 7.31–E(d)(1)(F) to provide that the rule would likewise apply to a Reserve Order that is a Day ISO. The Exchange further notes that this proposed change is consistent with the proposed change to Rule 7.31–E(d)(1)(B)(ii), which similarly provides that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order.

Finally, the Exchange proposes conforming changes to Rule 7.11–E(a)(5) and Rule 7.37–E(f)(2) to reflect the operation of Day ISO Reserve Orders.

Rule 7.11–E(a)(5) sets forth rules governing how Exchange systems will reprice or cancel buy (sell) orders that are priced or could be traded above (below) the Upper (Lower) Price Bands consistent with the Limit Up-Limit Down Plan. Rule 7.11–E(a)(5)(ii) currently provides that if the Price Bands move and the working price of a resting Market Order or Day ISO to buy (sell) is above (below) the updated Upper (Lower) Price Band, such orders will be cancelled. The Exchange proposes to amend Rule 7.11–E(a)(5)(ii) to clarify its applicability to any portion of a resting Day ISO that is designated Reserve. Thus, if the Price Bands move and the working price of any portion of a resting Day ISO Reserve Order to buy (sell) is above (below) the updated Upper (Lower) Price Band, the entirety of the Day ISO Reserve Order would be cancelled.

Rule 7.37–E(f)(2) describes the ISO exception to the Order Protection Rule. Rule 7.37–E(f)(2)(A) provides that the Exchange will accept ISOs to be executed in the NYSE Arca Book against orders at the Exchange's best bid or best offer without regard to whether the execution would trade through another market's Protected Quotation. Rule 7.37–E(f)(2)(B) provides that, if an ISO is marked as ''Immediate-or-Cancel,'' any portion of the order not executed upon arrival will be automatically cancelled; if an ISO is not marked as ''Immediate-or-Cancel,'' any balance of the order will be displayed without regard to whether that display would lock or cross another market center, so long as the order complies with Rule 7.37–E(e)(3)(C).[7] The Exchange proposes to amend Rule 7.37–E(f)(2)(B) to specify that, for an ISO not marked as ''Immediate-or-Cancel,'' any displayed portion of such order would be displayed, and any non-displayed portion would remain on the NYSE Arca Book. This proposed change is intended to clarify that the reserve interest of a Day ISO Reserve Order would not be displayed, but could, on arrival only, rest non-displayed at a price that would lock or cross another market center if the member organization has complied with Rule 7.37–E(e)(3)(C).

The proposed change is intended to facilitate the combined use of two existing order types available on the Exchange, thereby providing ETP Holders with enhanced flexibility, optionality, and efficiency when trading on the Exchange. The proposed change could also promote increased liquidity and trading opportunities on the Exchange, to the benefit of all market participants. The Exchange also believes the proposed change would permit the Exchange to offer functionality similar to that available on at least one other equities exchange, thereby promoting competition among equities exchanges.[8]

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the second quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market

[6] *See, e.g.,* Rules 7.31–E(e)(1), 7.31–E(e)(2), and 7.31–E(e)(3)(D) (permitting Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders, respectively, to be designated to cancel if they would be displayed at a price other than their limit price for any reason).

[7] Rule 7.37–E(e)(3)(C) provides that the prohibition against Locking and Crossing Quotations described in Rule 7.37–E(e)(2) does not apply when the Locking or Crossing Quotation was an Automated Quotation, and the ETP Holder displaying such Automated Quotation simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Quotation.

[8] *See, e.g.,* Nasdaq Stock Market LLC Rule 4702(b)(1)(C) (describing Price to Comply Order, which may be designated with both reserve size and as an ISO).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it would allow for the combined use of two existing order types available on the Exchange and permit the Exchange to offer functionality similar to that already available on at least one other equities exchange.[11] ETP Holders would be free to choose to use the proposed Day ISO Reserve Order type or not, and the proposed change would not otherwise impact the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, by expanding the options available to ETP Holders when trading on the Exchange and promoting increased liquidity and additional trading opportunities for all market participants.

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. In addition, as noted above, Exchange believes the proposed rule change would allow the Exchange to offer functionality already available on at least one other equities exchange [12] and thus would promote competition among equities exchanges. The Exchange also believes that, to the extent the proposed change increases opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The proposal would allow the Exchange to offer functionality similar to that already available on at least one other equities exchange.[17] ETP Holders would have the option to use the proposed Day ISO Reserve Order type, and the proposed change would not otherwise impact the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. Waiver of the operative delay would allow the Exchange to more expeditiously offer increased flexibility to ETP Holders and promote additional trading opportunities for all market participants. Therefore, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[18]

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) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–25 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–NYSEARCA–2024–25. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available

[11] *See* note 8, *supra.*

[12] *See id.*

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See* note 8, *supra.*

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–25 and should be submitted on or before April 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06073 Filed 3–21–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99759; File No. SR–DTC–2024–001]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Liquidity Risk Management Framework and the Clearing Agency Stress Testing Framework

March 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2024, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Liquidity Risk Management Framework (''LRM Framework'') and the Clearing Agency Stress Testing Framework (Market Risk) (''ST Framework'' and, together with the LRM Framework, the ''Frameworks'') of DTC and its affiliates, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC and DTC, the ''Clearing Agencies''), as described below. DTC is filing the proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder,[6] as described in greater detail below.[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Rules 17Ad–22(e)(4) and (7) under the Act require the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage their credit and liquidity risks.[8] The Clearing Agencies adopted the LRM Framework to set forth the manner in which they measure, monitor and manage the liquidity risks that arise in or are borne by each of the Clearing Agencies by, for example, (1) maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the Clearing Agency in extreme but plausible market conditions, and (2) determining the amount and regularly testing the sufficiency of qualifying liquid resources by conducting stress testing of those resources.[9] In this way, the LRM Framework describes the liquidity risk management activities of each of the Clearing Agencies and how the Clearing Agencies meet the applicable requirements of Rule 17Ad–22(e)(7).[10]

The Clearing Agencies adopted the ST Framework to set forth the manner in which they identify, measure, monitor, and manage their respective credit exposures to participants and those arising from their respective payment, clearing, and settlement processes by, for example, maintaining sufficient prefunded financial resources to cover its credit exposures to each participant fully with a high degree of confidence and testing the sufficiency of those prefunded financial resources through stress testing.[11] In this way, the ST Framework describes the stress testing activities of each of the Clearing Agencies and how the Clearing Agencies meet the applicable requirements of Rule 17Ad–22(e)(4) under the Act.[12]

Proposed Changes

The Clearing Agencies propose to make clarifying and organizational changes to the LRM Framework and ST Framework designed to improve the accuracy and clarity of the documents. Specifically, the proposed changes would (i) clarify in the LRM Framework the resources currently available to FICC and NSCC to meet settlement obligations and foreseeable liquidity shortfalls; (ii) clarify in the LRM Framework the Clearing Agencies' practices for reporting and escalating liquidity risk tolerance threshold breaches; (iii) relocate the governance and escalation requirements related to certain liquidity risk management processes from the ST Framework to the LRM Framework; and (iv) make other non-substantive clarifying, organizational, and cleanup changes to the LRM Framework. The proposed changes are described in detail below.

Proposed Clarifications to Description of FICC and NSCC Liquidity Resources

The LRM Framework describes how the Clearing Agencies would address foreseeable liquidity shortfalls that would not be covered by their existing liquid resources. In the case of FICC, the LRM Framework provides, among other things, that the FICC Government Securities Division (''GSD'') and Mortgage-Backed Securities Division (''MBSD'') would look for additional repo counterparties beyond their respective existing master repurchase

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] Capitalized terms not defined herein shall have the meaning assigned to such terms in each of the Clearing Agencies' respective Rules, *available at www.dtcc.com/legal/rules-and-procedures.*

[8] *See* 17 CFR 240.17Ad–22(e)(4) and (7).

[9] *See* Securities Exchange Act Release No. 82377 (Dec. 21, 2017), 82 FR 61617 (Dec. 28, 2017) (File Nos. SR–DTC–2017–004; SR–FICC–2017–008; SR–NSCC–2017–005).

[10] 17 CFR 240.17Ad–22(e)(7).

[11] *See* Securities Exchange Act Release No. 82368 (Dec. 19, 2017), 82 FR 61082 (Dec. 26, 2017) (SR–DTC–2017–005; SR–FICC–2017–009; SR–NSCC–2017–006).

[12] 17 CFR 240.17Ad–22(e)(4).

agreements and that MBSD may seek Members to provide additional repo capacity beyond their Capped Contingency Liquidity Facility (''CCLF'') requirements.[13] With respect to NSCC, the LRM Framework provides that NSCC may look to utilize, among other things, certain uncommitted repurchase arrangements (*e.g.,* stock loans or equity repos) or other uncommitted credit facilities to address foreseeable liquidity shortfalls. The Clearing Agencies propose to revise these statements and replace them with more accurate summaries of the types of liquidity resources available to FICC and NSCC.

The Clearing Agencies would modify the LRM Framework to state that FICC may use Clearing Fund deposits to meet its settlement obligations, as permitted under GSD Rule 4 and MBSD Rule 4,[14] either through direct use of cash deposits to the Clearing Funds or through the pledge or rehypothecation of pledged eligible Clearing Fund securities. The LRM Framework would also be revised to clarify that FICC could also address a liquidity shortfall by accessing a short-term financial commercial arrangement, such as uncommitted Master Repurchase Agreements maintained by FICC and which do not constitute qualifying liquid resources, or by utilizing its general corporate funds to the extent such funds exceed amounts needed to meet FICC's regulatory capital requirements. In addition, the Clearing Agencies would further clarify that FICC could also address a liquidity shortfall by accessing its existing repo counterparties, even if such funds may not be available to meet same-day settlement obligations. The Clearing Agencies would also delete a footnote containing a cross-reference to a previously deleted footnote.

The Clearing Agencies also propose to revise the LRM Framework to remove references to certain specific uncommitted resources of NSCC, such as stock loans, equity repos, and other uncommitted credit facilities, which are no longer available to NSCC and for which NSCC no longer maintains the necessary agreements. This would be replaced with a more general clarification that all of the Clearing Agencies may seek to address unforeseen liquidity shortfalls in excess of qualifying liquid resources through uncommitted arrangements. The Clearing Agencies would also update the LRM Framework to use more accurate terminology and descriptions of NSCC's senior note issuance program. These proposed changes are not intended to reflect actual substantive changes to the senior note issuance program.

The Clearing Agencies believe the proposed changes would enhance the LRM Framework by more precisely describing the existing tools and resources that FICC and NSCC may utilize to address foreseeable liquidity shortfalls in compliance with Rule 17Ad–22(e)(7)(viii) under the Act.[15]

Proposed Clarifications to Liquidity Risk Tolerances

The LRM Framework describes the manner in which the liquidity risks of the Clearing Agencies are assessed and escalated through liquidity risk management controls that include a statement of risk tolerances that are specific to liquidity risk (''Liquidity Risk Tolerance Statement''). The Clearing Agencies propose to revise the LRM Framework to provide additional clarity and accuracy around their existing processes for reporting and escalating liquidity risk tolerances.

The Clearing Agencies would revise the LRM Framework to remove certain statements regarding the reporting of risk tolerances and instead clarify that liquidity risk tolerance thresholds are communicated to relevant personnel and the management risk committee as prescribed by the Liquidity Risk Tolerance Statement of the Clearing Agencies' Corporate Risk Management Policy, with necessary escalation and analyses performed in accordance with a newly proposed section of the LRM Framework concerning liquidity risk governance and escalations (described in further detail below). This would include the removal of an outdated statement concerning potential responses to risk tolerance threshold reporting (*e.g.,* responses such as risk avoidance, risk mitigation, risk acceptance), and instead focus on the required escalations set forth in the Liquidity Risk Tolerance Statements to be more consistent with the process as described in the Corporate Risk Management Policy. The Clearing Agencies would also remove specific references to the Stress Testing Team in communicating liquidity risk tolerance thresholds because this task may be performed by staff within the overall Liquidity Risk and Stress Testing function of DTCC. In addition, the LRM Framework would be revised to clarify that the liquidity risk profile prepared by the Operational Risk Management department (''ORM'') is reviewed with senior management in the Group Chief Risk Office (and not just within the Liquidity Risk Management team) and to update the name of the risk profile used by ORM to monitor liquidity risk management. The Clearing Agencies believe the proposed changes would enhance the LRM Framework by improving the accuracy and clarity of the document as it relates to liquidity risk tolerance reporting.

Proposed Clarifications to Liquidity Risk Governance and Escalation

On November 17, 2022, the Commission approved a proposed rule change by the Clearing Agencies to amend the ST Framework and LRM Framework to, among other things, relocate certain descriptions of the Clearing Agencies' liquidity stress testing activities from the LRM Framework to the ST Framework.[16] This included certain requirements related to liquidity risk escalations, and in particular, the process for escalating liquidity shortfalls. The Clearing Agencies now propose to add a new section to the LRM Framework to relocate requirements related to liquidity risk governance and the escalation of liquidity shortfalls back into the LRM Framework because these activities and processes are primarily driven the Clearing Agencies' Liquidity Risk Management team.

The Clearing Agencies propose to add a new Liquidity Risk Governance sub-section to the LRM Framework, which would contain the same information as the Stress Test Governance section of the ST Framework but with modifications to refer to liquidity risk policies, procedures and risk tolerance statements rather than stress testing policies, procedures and risk tolerance statements. Additionally, the Clearing Agencies would relocate the Escalation of Liquidity Shortfalls section of the ST Framework to the LRM Framework with certain modifications and drafting clarifications. Specifically, the Clearing Agencies would revise and clarify the manner in which liquidity risk tolerance threshold breaches and liquidity shortfalls are identified, reported and escalated by stating that liquidity risk tolerance threshold breaches and liquidity shortfalls identified through the daily liquidity studies are reported and escalated in accordance with the Clearing Agencies' Liquidity Risk Tolerance Statement. The Clearing

[13] *See* FICC GSD Rule 22A, Section 2a and FICC MBSD Rule 17, Section 2a, *supra* note 7.

[14] *See supra* note 7.

[15] 17 CFR 240.17Ad–22(e)(7)(viii).

[16] *See* Securities Exchange Act Release No. 96345 (Nov. 17, 2022), 87 FR 71714 (Nov. 23, 2022) (File Nos. SR–DTC–2022–006; SR–FICC–2022–004; SR–NSCC–2022–006).

Agencies would also clarify that the Liquidity Risk Management team performs the daily analysis of any calculated liquidity shortfalls. In addition, the Clearing Agencies would clarify that the management risk committee does not directly evaluate the adequacy of liquidity resources as a first line function but rather reviews management evaluations and recommendations related to the adequacy of such resources, which may include adjusting the CCP's liquidity risk management methodology, model parameters, and any other relevant aspect of its liquidity risk management framework, or otherwise supplementing liquid resources. The ST Framework would also be revised to state that liquidity risk tolerance and liquidity shortfall reporting and escalations are governed by the LRM Framework.

Other Clarifying, Cleanup and Organizational Changes

Finally, the Clearing Agencies propose other clarifying, cleanup and organizational changes to the LRM Framework to improve the accuracy and clarity of the document. The Clearing Agencies would relocate the definition of ''qualifying liquid resources'' from Section 5 of the LRM Framework to the Glossary of Key Terms in Section 2, with minor modifications to associated footnotes and citations, so that this term is clearly defined before its first usage within the LRM Framework. The Clearing Agencies would also update the Glossary of Key Terms to refer to the DTCC Treasury ''department'' rather than DTCC Treasury ''group'' to align with other references to the DTCC Treasury department throughout the LRM Framework and remove the defined term ''Stress Testing Team'' because specific responsibilities of this team would no longer be described in LRM Framework as they are covered in the ST Framework.

In addition, Clearing Agencies would make several cleanup changes in the Liquidity Risk Measurement section of the LRM Framework to remove an outdated reference to previously removed sections of the LRM Framework, refer to the new Liquidity Risk Governance and Escalation Procedures section of the LRM Framework, and remove a specific reference to the Stress Test Team (the responsibilities of which are addressed in the ST Framework).

Finally, the Clearing Agencies would make a minor clarification in the LRM Framework regarding the annual testing of certain uncommitted liquidity providers, which are non-qualifying liquid resources of FICC.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act[17] and Rule 17Ad–22(e)(7) under the Act[18] for the reasons set forth below.

Section 17A(b)(3)(F) of the Act[19] requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The proposed changes would improve the accuracy and clarity of the Frameworks, and specifically the LRM Framework, by (i) clarifying in the LRM Framework the resources currently available to FICC and NSCC to meet settlement obligations and liquidity shortfalls; (ii) clarifying in the LRM Framework the Clearing Agencies' practices for reporting and escalating liquidity risk tolerance thresholds; (iii) relocating the governance and escalation requirements related to certain liquidity risk management processes from the ST Framework to the LRM Framework; and (iv) making other non-substantive clarifying, organizational and cleanup changes to the LRM Framework. The LRM Framework and the policies and procedures that support the LRM Framework help assure that each Clearing Agency can effectively measure, monitor, and manage their liquidity risks to promote the timely settlement of securities transactions. The proposed changes would enhance the LRM Framework by improving the accuracy and clarity of the descriptions of key aspects of the Clearing Agencies' liquidity risk management processes, thereby facilitating the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions as required by Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(7) under the Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[20] As discussed above, the LRM Framework and the policies and procedures that support the LRM Framework help assure that each Clearing Agency can effectively measure, monitor, and manage their liquidity risks. The Clearing Agencies believe that by improving the accuracy and clarity of the descriptions of key aspects of the Clearing Agencies' liquidity risk management processes, the proposed changes would facilitate the maintenance of written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risks as required by Rule 17Ad–22(e)(7) under the Act.

In addition, Rule 17Ad–22(e)(7)(viii) under the Act specifically requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by the covered clearing agency's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.[21] The Clearing Agencies believe that including additional clarity and specificity in the LRM Framework concerning the types of liquidity resources available to FICC and NSCC to address foreseeable liquidity shortfalls would further promote compliance with Rule 17Ad–22(e)(7)(viii) under the Act.

For these reasons, the Clearing Agencies believe the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[22] and Rule 17Ad–22(e)(7) thereunder.[23]

(B) Clearing Agency's Statement on Burden on Competition

The proposed changes would enhance the Frameworks, and specifically the LRM Framework, by providing additional clarity and accuracy concerning the Clearing Agencies' existing liquidity risk management processes. The Frameworks, and the proposed rule changes described herein, would not advantage or disadvantage any particular participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. The Clearing Agencies therefore do not believe that the proposed rule change would have any impact, or impose any burden, on competition.

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(7).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] *See* 17 CFR 240.17Ad–22(e)(7).

[21] *See* 17 CFR 240.17Ad–22(e)(7)(viii).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(7).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25]

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.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2024–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2024–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–DTC–2024–001 and should be submitted on or before April 12, 2024.

[26] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06068 Filed 3–21–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99757; File No. SR–IEX–2024–05]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule 6.210 (Ex-Dividend or Ex-Right Dates)

March 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2024, the Investors Exchange LLC (''IEX'' 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

Pursuant to the provisions of Section 19(b)(1) under the Act,[3] and Rule 19b–4 thereunder,[4] IEX is filing with the Commission a proposed rule change to amend IEX Rule 6.210 (Ex-Dividend or Ex-Right Dates) to conform it to the Commission's amendment to Rule 15c6–1(a) of the Act[5] to shorten the standard settlement cycle for most broker-dealer transactions. The Exchange has designated this proposal as ''non-controversial'' and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release No. 96930, Investment Advisers Act Release No. 6239 (February 15, 2023), 88 FR 13872 (March 6, 2023) (''T+1 Adopting Release'').

[6] 17 CFR 240.19b–4(f)(6)(iii).

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective May 28, 2024, the standard settlement cycle for most broker-dealer transactions will be shortened from two business days after the trade date (''T+2'') to one business day after the trade date (''T+1'').[7] To reflect this shortened settlement cycle, IEX proposes to amend IEX Rule 6.120 (Ex-Dividend or Ex-Right Dates).

IEX Rule 6.120 currently provides that transactions in securities traded ''regular'' shall be ''ex-dividend'' or ''ex-rights'' as the case may be, on the first business day preceding the record date fixed by the company or the date of the closing of the transfer books.[8] It also provides that if the record date or closing of transfer books occurs on a day other than a business day, the transaction will be ex-dividend or ex-rights on the second preceding business day.[9]

The Exchange proposes to amend IEX Rule 6.120 to shorten the time frames by one business day. With this change, the ex-dividend or ex-right date would be the same business day as the record date, if the record date occurs on a business day, or the first business day preceding the record date if the record date occurs on a day other than a business day. IEX notes that this rule change is substantively identical to a recent Nasdaq Phlx LLC (''Nasdaq Phlx'') rule change that amended Nasdaq Phlx Equity 11, Section 6 (Ex-dividend, Ex-rights).[10]

Implementation

The Exchange proposes to implement this proposed rule change on Tuesday, May 28, 2024, the compliance date specified in the Commission's amendment to Rule 15c6–1(a) of the Act,[11] or such later date as may be announced by the Commission, so that the operative date coincides with implementation of the T+1 standard settlement cycle industry change. IEX will announce the operative date of the proposed rule change in a trader alert.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general and furthers the objectives of Section 6(b)(5) [13] of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change seeks to conform IEX's rules with the adopted Commission rule amendment to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.[14] The proposal is consistent with the Commission's amendment to Rule 15c6–1(a) of the Act to require standard settlement no later than T+1. This proposal will provide IEX Members [15] with regulatory certainty as to the settlement cycle that will be utilized to settle transactions executed on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change is not designed to address any competitive issues but rather to provide for the appropriate determination and dissemination of ex-dates, to provide certainty as to which security holder will receive the corporate action consideration. The Exchange also believes that the proposed rule change will serve to promote clarity and consistency, as noted in the Statutory Basis section, thereby reducing burdens on competition and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–IEX–2024–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–IEX–2024–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[7] *See* T+1 Adopting Release, 88 FR 13872, 13916 (amending Rule 15c6–1(a) under the Act to require settlement no later than T+1 starting on May 28, 2024).

[8] *See* IEX Rule 6.210.

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 98955 (November 15, 2023), 88 FR 81161 (November 21, 2023) (SR–Phlx–2023–49).

[11] *See supra* note 8.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 6.

[15] *See* IEX Rule 1.160(s).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–IEX–2024–05 and should be submitted on or before April 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06069 Filed 3–21–24; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36757]

Great Lakes Basin Railroad—Operation Exemption—Line in Hammond, Ind.

Great Lakes Basin Railroad (GLBR), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to operate certain railroad track located inside an existing industrial facility in Hammond, Ind. The track begins at a point of connection with Norfolk Southern Railway Company's Chicago District at a switch located at approximately milepost 499.4 and extends approximately 1,623 feet (the Line).[1] According to GLBR, the Line is currently private track and has no mileposts.

According to the verified notice, the Line is owned by N/S Hammond LLC (N/S) and does not have operations on it as part of the industrial facility. GLBR has reached an agreement with N/S under which GLBR will commence common carrier service over the Line on or after the effective date of this exemption.

GLBR states that the proposed transaction does not involve any provision or agreement that would limit future interchange on the Line with a third-party connecting carrier. GLBR certifies that its projected annual revenue will not exceed $5 million and will not exceed those that would qualify it as a Class III carrier.

The earliest this transaction may be consummated is April 5, 2024, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 29, 2024.

All pleadings, referring to Docket No. FD 36757, must be filed with the Surface Transportation Board either 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 GLBR's representative, Daniel Elliott, Esq., GKG Law, 1055 Thomas Jefferson Street NW, Suite 620, Washington, DC 20007–4492.

According to GLBR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: March 19, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024–06119 Filed 3–21–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2246]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Means of Compliance, Declarations of Compliance, and Labeling Requirements for Unmanned Aircraft With Remote Identification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 21, 2023. The collection involves information necessary to submit a Means of Compliance or Declaration of Compliance for Unmanned Aircraft with Remote Identification to the FAA. The collection also involves information necessary to label Unmanned Aircraft that have an FAA-accepted Declaration of Compliance. The information to be collected will be used by the FAA to determine compliance with the requirements for submission of a Means of Compliance or Declaration of Compliance, as well as determine compliance with the Unmanned Aircraft labeling requirements.

DATES: Written comments should be submitted by April 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Benjamin Walsh by email at: *ben.walsh@faa.gov;* phone: 202–267–8233.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's

[16] 17 CFR 200.30–3(a)(12).

[1] The verified notice was initially filed on February 26, 2024. GLBR filed a supplement on March 6, 2024. Accordingly, for purposes of calculating regulatory deadlines, March 6 will be treated as the filing date.

performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0781.

Title: Means of Compliance, Declarations of Compliance, and Labeling Requirements for Unmanned Aircraft with Remote Identification.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 21, 2023 (88 FR 81174). Regulations for the Remote Identification of Unmanned Aircraft were published on January 15, 2021, and are contained in 14 Code of Federal Regulations (14 CFR), part 89. Requirements for the means of compliance are in part 89, subpart E, while requirements for the declaration of compliance and unmanned aircraft labeling are in part 89, subpart F.

Means of Compliance

The FAA requires any person who develops a means of compliance for the production of a standard remote identification unmanned aircraft or remote identification broadcast module to submit those means of compliance for review and acceptance by the FAA. The means of compliance must include testing and validation procedures for producers to demonstrate through analysis, ground test, or flight test, as appropriate, how the standard remote identification unmanned aircraft or remote identification broadcast module perform their intended functions and how they meet the remote identification requirements of the final rule.

To request acceptance of a means of compliance, a person is required to submit the following information to the FAA at *9-AVS-AIR-UASMOC@faa.gov:*

(1) The name of the person or entity submitting the means of compliance, the name of the main point of contact for communications with the FAA, the physical address, email address, and other contact information.

(2) A detailed description of the means of compliance.

(3) An explanation of how the means of compliance addresses all of the minimum performance requirements in the rule so that any standard remote identification unmanned aircraft or remote identification broadcast module designed and produced in accordance with such means of compliance meets the remote identification requirements.

(4) Any substantiating material the person wishes the FAA to consider as part of the request.

The FAA will indicate acceptance of a means of compliance by notifying the submitter of the acceptance of the submitted means of compliance. The FAA also expects to notify the public that it has accepted the means of compliance by including it on a list of accepted means of compliance at *https://uasdoc.faa.gov.* The FAA will not disclose commercially sensitive information in this notice. It will only provide general information stating that FAA has accepted the means of compliance. The FAA may disclose non-proprietary broadcast specification and radio frequency spectrum so that sufficient information is available to develop receiving and processing equipment and software for the FAA, law enforcement, and members of the public.

A person who submits a means of compliance that is accepted by the FAA is required to retain the following data for as long as the means of compliance is accepted plus an additional 24 calendar months: (1) all documentation and substantiating data submitted to the FAA for the acceptance of the means of compliance; (2) records of all test procedures, methodology, and other procedures, as applicable; and (3) any other information necessary to justify and substantiate how the means of compliance enables compliance with the remote identification requirements imposed by the FAA.

Declarations of Compliance

The FAA has a website and online form at *https://uasdoc.faa.gov* for the submission of declarations of compliance. The following information must be included in a producer's declaration of compliance:

(1) The name, physical address, telephone number, and email address of the person responsible for production of the standard remote identification unmanned aircraft or remote identification broadcast module.

(2) The standard remote identification unmanned aircraft or remote identification broadcast module make and model.

(3) The standard remote identification unmanned aircraft or remote identification broadcast module serial number, or the range of serial numbers for which the person responsible for production is declaring compliance.

(4) The FCC Identifier of the 47 CFR part 15-compliant radio frequency equipment used and integrated into the standard remote identification unmanned aircraft or the remote identification broadcast module.

(5) The means of compliance used in the design and production of the standard remote identification unmanned aircraft or remote identification broadcast module.

(6) Whether the declaration of compliance is an initial declaration or an amended declaration, and if the declaration of compliance is an amended declaration, the reason for the amendment.

(7) A declaration that the person responsible for the production of the standard remote identification unmanned aircraft or remote identification broadcast module can demonstrate that the standard remote identification unmanned aircraft or remote identification broadcast module was designed and produced to meet the respective minimum performance requirements for a standard remote identification unmanned aircraft or remote identification broadcast module by using an FAA-accepted means of compliance.

(8) A statement that 47 CFR part 15-compliant radio frequency equipment is used and is integrated into the standard remote identification unmanned aircraft or remote identification broadcast module without modification to its authorized radio frequency parameters. For the remote identification broadcast module, the declaration must include a statement that instructions have been provided for installation of the 47 CFR part 15-compliant remote identification broadcast module without modification to the broadcast module's authorized radio frequency parameters.

The FAA will indicate acceptance or non-acceptance of a declaration of compliance by notifying the submitter. The FAA will also publish a list of accepted declarations of compliance at *https://uasdoc.faa.gov.*

A person or entity who submits a declaration of compliance that is accepted by the FAA must retain the following information for as long as the standard remote identification unmanned aircraft or remote identification broadcast module listed on that declaration of compliance are produced, plus an additional 24 calendar months: (1) the means of compliance, all documentation, and substantiating data related to the means of compliance used; (2) records of all test results; and (3) any other information necessary to demonstrate compliance with the means of compliance so that the standard remote identification unmanned aircraft or remote identification broadcast module

meets the remote identification requirements and the design and production requirements of the final rule.

Labeling

The final rule requires a person responsible for the production of a standard remote identification unmanned aircraft or remote identification broadcast module to label each unmanned aircraft or broadcast module to show that it meets the remote identification requirements of the rule. The label must be in English and be legible, be prominently displayed, and permanently affixed to the unmanned aircraft or broadcast module.

For existing unmanned aircraft that are upgraded to have remote identification broadcast module capabilities integrated into the aircraft, the FAA envisions that the label would be affixed to the unmanned aircraft. In those instances, the producer may provide the label to the operator and instructions on how to affix them to the unmanned aircraft. Standard remote identification unmanned aircraft produced under a design or production approval issued under part 21 have to comply with the labeling requirements of part 21, as applicable.

The labeling requirement will assist the FAA in its oversight role because it provides an efficient means for an inspector to evaluate whether an operation is consistent with the remote identification requirements.

Respondents: The FAA website at *https://uasdoc.faa.gov* provides information about how to submit a means of compliance and also provides an online form for the submission of declarations of compliance. The FAA expects persons or organizations who develop standards that the FAA may accept as means of compliance for the production of standard remote identification unmanned aircraft or remote identification broadcast modules to submit those standards for review and acceptance by the FAA at *9-AVS-AIR-UASMOC@faa.gov.* Persons responsible for the production of a standard remote identification unmanned aircraft or remote identification broadcast module can submit a declaration of compliance to the FAA using the online form at *https://uasdoc.faa.gov.* Producers of a standard remote identification unmanned aircraft or remote identification broadcast module must label the unmanned aircraft or broadcast module to show that it meets the Part 89 remote identification requirements.

Frequency: For means of compliance, on occasion. For declarations of compliance, on occasion. For labeling requirements, on occasion.

Estimated Average Burden per Response: For means of compliance, the FAA estimates an hourly burden of 12 hours to develop the means of compliance and 5 minutes to submit the information to the FAA. For declarations of compliance, the FAA estimates an hourly burden of 50 hours to collect the information required by the applicable means of compliance, and 15 minutes to fill out the online declaration of compliance form. For unmanned aircraft labels, the FAA estimates an hourly burden of 2 hours to design a label for a standard remote identification unmanned aircraft or remote identification broadcast module.

Estimated Total Annual Burden: For means of compliance, the FAA estimates a total of one means of compliance submitted per year for an annual burden of 12 hours. For declarations of compliance, the FAA estimates an average of 862 declarations of compliance submitted per year, for a total annual burden of 43,100 hours for all respondents (50 hours per response). For unmanned aircraft labels, the FAA estimates an average of 200 labels designed per year, for a total annual burden of 400 hours for all respondents (2 hours per response).

Issued in Washington, DC, on March 18, 2024.

Joseph Morra,

Manager, Emerging Technologies Division, AFS–700.

[FR Doc. 2024–06062 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0020]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 21, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0020 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Aimee Zhang, (202) 366–6537, Office of Safety Technologies, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Request for Federal Aid Reimbursement Eligibility of Safety Hardware Devices.

Background: The FHWA' s longstanding policy is that all roadside safety hardware installed on the National Highway System (NHS) be crashworthy. To support this policy, the AASHTO/FHWA Joint Implementation Agreement for the Manual for Assessing Safety Hardware (MASH) was adopted. This agreement implemented AASHTO MASH as the criteria for determining crashworthiness of roadside safety hardware.

FHWA provides a service to States and industry by reviewing tests for roadside hardware, ensuring that they have been tested in accordance with MASH criterion, and issuing a federal aid eligibility letter for roadside hardware that meet review standards. An eligibility letter is not a requirement for roadside safety hardware to be determined eligible for Federal funding. Roadside safety hardware is eligible for Federal funding if it has been determined to be crash worthy by the user agency.

To issue eligibility letters for roadside safety hardware, the FHWA needs to collect and review crash test results and hardware information from the submitters.

Respondents: Approximately 60 submissions are received annually.

Frequency: 60 submissions annually.

Estimated Average Burden per Response: Averagely 16 hours per submission.

Estimated Total Annual Burden Hours: Approximately 960 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 18, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–06027 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0018]

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Highway Project in Clark County, Nevada

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (USDOT).

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: FHWA and Nevada Department of Transportation (NDOT) are issuing this Notice of Intent (NOI) to solicit comments and advise the public, agencies, and stakeholders that FHWA will prepare an Environmental Impact Statement (EIS) for transportation improvements to a section of Interstate 11 (I–11)/U.S. Highway 95 (US 95)/U.S. Highway 93 (US 93) in the City of Las Vegas, Clark County, Nevada. The project is referred to as the Downtown Access Project. This NOI contains a summary of information as required in the Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA). This NOI should be reviewed together with the Additional Project Information document, which contains additional important details about the proposed project. Persons and agencies who may be interested in or affected by the proposed project are encouraged to comment on the information in this NOI and the Additional Project Information document. All comments received in response to this NOI will be considered and any information presented herein, including the preliminary purpose and need, preliminary alternatives, and identified impacts, may be revised in consideration of the comments.

DATES: Comments on the NOI and/or the Additional Project Information document must be received on or before April 22, 2024.

ADDRESSES: This NOI and the Additional Project Information document are available in Docket No. FHWA–2024–0018, which is available at *www.regulations.gov* and on the project website located at *www.ndotdap.com* under the ''Environmental'' tab. Additional Project Information document will also be mailed upon request. All interested parties are invited to submit comments on the NOI using any of the following methods:

- *Website:* For access to the documents, go to the Federal eRulemaking Portal located at *www.regulations.gov* or the project website located at *www.ndotdap.com* under the ''Environmental'' tab. Follow the online instructions for submitting comments at *www.regulations.gov.*
- *Phone:* Abdelmoez Abdalla at (775) 687–1231 or Ryan Wheeler at (702) 278–3391.
- *Mail:* FHWA Nevada Division, 705 N Plaza, Suite 220, Carson City, NV 89701, Attention: Abdelmoez Abdalla; or Nevada Department of Transportation, 123 E Washington Ave., Las Vegas, NV 89101, Attention: Ryan Wheeler.
- *Email address: abdelmoez.abdalla@dot.gov* or *rwheeler@dot.nv.gov.*
- *Project email address: info@ndotdap.com.*

All submissions should include the agency name and the docket number that appears in this NOI. All comments received will be posted without change on *http://www.regulations.gov,* including any personal information provided.

The Draft EIS will include a summary of the comments received.

FOR FURTHER INFORMATION CONTACT: For further information and/or to be placed on the project mailing list, contact Abdelmoez Abdalla, Environmental Program Manager, FHWA Nevada Division, 705 N Plaza, Suite 220, Carson City, NV 89701; (775) 687–1231, *abdelmoez.abdalla@dot.gov;* or Ryan Wheeler, Senior Project Manager, Nevada Department of Transportation, 123 E Washington Ave., Las Vegas, NV 89101; (702) 278–3391, *rwheeler@dot.nv.gov.*

Persons interested in receiving project information can also use the project email address to be added to the project mailing list.

SUPPLEMENTARY INFORMATION: FHWA and NDOT are committed to public involvement for this project. All public comments received in response to this NOI will be considered and potential revisions will be made to the information presented herein as appropriate. FHWA, as the lead Federal Agency, and NDOT, as the lead State agency and project sponsor, are preparing an EIS to evaluate transportation solutions on I–11/US 95/US 93 [1] in the City of Las Vegas, Clark County, Nevada in accordance with NEPA, as amended (42 United States Code [U.S.C.] 4321, *et seq.*); 23 U.S.C. 139, CEQ regulations for implementing NEPA (40 Code of Regulations [CFR] 1500–1508); FHWA regulations implementing NEPA (23 CFR 771.101–771.139, 23 CFR part 772, and 23 CFR part 774); and applicable Federal, State, and local laws and regulations.

The EIS will evaluate the environmental effects of all reasonable project alternatives and determine the potential impacts to social, economic, natural, and physical environmental resources associated with these alternatives. The project team and agencies will work together to identify and mitigate any potentially significant impacts through the NEPA process. FHWA will consider, screen, and carry forward all reasonable alternatives for a detailed analysis in the Draft EIS based on their ability to address the project's purpose and need while minimizing adverse impacts to the natural and human environment.

To ensure that a full range of issues are addressed in the EIS and potential issues are identified, comments and suggestions are invited from all interested parties. FHWA requests comments on the purpose and need statement, project alternatives and impacts, and the identification of any relevant information, studies, or analyses of any kind concerning impacts to the quality of the natural and human environment. The purpose of this request is to bring relevant comments, information, and analyses to the

[1] Interstate 11 (I–11) was formerly signed as Interstate 515 (I–515).

attention of FHWA and NDOT as early in the process as possible, to enable the agency to make maximum use of this information in the decision-making process.

Purpose and Need for the Proposed Action

The purpose of the project is to address aging infrastructure, safety, and congestion along I–11/US 95/US 93 between Rancho Drive and Mojave Road in Las Vegas to increase the efficiency of the movement of people, goods, and services on the freeway. Improvements are necessary to address the following: (1) aging bridges; (2) closely spaced ramps that create short merge and weave distances; and (3) unacceptable congestion caused by increased traffic volumes on a freeway structure that has never been widened in a city that has grown 1,000 percent since I–11/US 95/US 93 was opened to traffic in 1968.

In addition to the needs, several project goals were identified to revitalize and reconnect the community. These are: (1) improve neighborhood multimodal mobility; (2) reconnect neighborhoods; (3) enhance public health and wellness; (4) improve human and natural environment; (5) improve infrastructure resiliency; and (6) support economic growth. These reflect topics important to the public, stakeholders, and agencies.

The purpose and need statement, and project goals may be revised based on the comments received during the comment period for this NOI.

Preliminary Description of the Proposed Action and Alternatives the EIS Will Consider

Three alternatives were initially developed, evaluated, and then presented to the public at a public information meeting in January 2022: Alternative 1 was a South Alternative that widened and shifted I–11/US 95/US 93 to the south; Alternative 2 was a North Alternative that widened and shifted I–11/US 95/US 93 to the north; and Alternative 3 was a Recessed Alternative in which I–11/US 95/US 93 was widened and shifted north of the existing freeway and placed below ground in an open trench for approximately 1 mile. In addition, Alternative 4 is the No Build Alternative. These alternatives included HOV lanes as well as HOV-only interchanges at Maryland Parkway and City Parkway. Preliminary impacts were identified for the alternatives and presented at the public meeting in January 2022. In spring 2022, U.S. Environmental Protection Agency (EPA) expressed concerns due to the high number of residential displacements in an environmental justice community. FHWA shared these concerns. EPA and FHWA asked NDOT to revise the alternatives to reduce impacts and to solicit more community input to better understand what the community would like to see in a reconstructed freeway (see further discussion in Description of the Public Scoping Process, later in this document). As a result of this effort, Alternatives 1, 2, and 3 (South, North, and Recessed Alternatives), as initially developed, were dismissed from further consideration due to their community impacts (*i.e.,* the large number of displacements in the environmental justice community) and NDOT developed Alternatives 5, 6, 7, and 8.

NDOT presented these four alternatives, along with the No Build Alternative, at a public meeting in August 2023. Based on feedback from the public meeting, input from FHWA, and because of its larger footprint and high number of potential displacements, as well as the higher cost, Alternative 8 (Recessed with No HOV Interchanges) was dismissed from further consideration. Other factors in NDOT's decision to dismiss Alternative 8 from further consideration were that it would be more complex and riskier to build than Alternatives 5, 6, and 7; it would be more expensive to maintain after construction; and Union Pacific Railroad's opposition to moving their tracks to a bridge over I–11/US 95/US 93 rather than having I–11/US 95/US 93 go over their tracks.

The proposed action would reconstruct I–11/US 95/US 93 through downtown Las Vegas, including adding a general-purpose lane and continuous high-occupancy-vehicle (HOV) lane in each direction; potentially constructing a new HOV interchange; modifying ramps that connect I–11/US 95/US 93 to I–15 by adding collector-distributor roads and ramp braiding to improve traffic and safety on the freeway; and reconstructing existing interchanges along the 4-mile-long stretch of freeway.

FHWA and NDOT propose to evaluate three Build Alternatives and the No Build Alternative in the EIS. The three Build Alternatives under consideration are Alternative 5: Elevated with HOV Interchange at City Parkway, Alternative 6: Elevated with No HOV Interchange, and Alternative 7: Elevated with No HOV Interchange plus Revised I–11/US 95/US 93 Ramp Connections to I–15 North. All three Build Alternatives would remove the Las Vegas Viaduct and widen I–11/US 95/US 93 to the north. The freeway would still be elevated east of I–15, but on an earth berm with bridges over local streets. The No Build Alternative (Alternative 4) assumes no improvements other than routine maintenance.

More information on the alternatives is included in the Additional Project Information document available for review in the docket established for this project and on the project website as noted in the **ADDRESSES** section. NDOT and FHWA may revise the alternatives based on public comments and/or to further reduce the number of displacements based on the preliminary engineering and environmental analyses during the NEPA review. NDOT and FHWA will finalize the range of reasonable alternatives after considering comments received during the comment period on this NOI, and the comments will be documented in the Draft EIS.

Summary of Expected Impacts

The EIS will evaluate potential social, economic, and environmental impacts of implementing the Build Alternatives and the No Build Alternative. Based on a preliminary review of existing conditions within and in proximity to the study area, the environmental issues and considerations that will require the most attention by NDOT and FHWA to minimize project impacts during the environmental review process are as follows:

- *Displacements.* The Downtown Access Project study area is a densely developed urban area and, as a result, the project's most notable impacts would be property acquisition and displacing residences (preliminary estimates range from 46 to 51), businesses (preliminary estimates range from 2 to 11), and community/public buildings (6).
- *Environmental Justice.* Environmental justice populations include minority and/or low-income persons as defined in FHWA Order 6640.23A (2012) and the appendix of the USDOT Order 5610.2C (2021). Most, if not all, of the residential areas adjacent to the study area are Environmental Justice communities. There is the potential for disproportionate adverse impacts to the Environmental Justice communities because of potential displacements to residences, businesses, and community buildings, as well as noise and visual impacts.
- *Cultural Resources.* There are 28 properties in the study corridor area of potential effect that are either listed, eligible, or potentially eligible for listing on the National Register of Historic Places. FHWA and NDOT are assessing to determine if there would be an effect on the properties. Section 106 consultation with the State Historic

Preservation Office (SHPO) and other consulting parties is underway. Under Alternatives 5 and 7 it appears there will be adverse effects to three historic buildings, and under Alternative 6 there will be an adverse effect to one historic building, pending SHPO concurrence.

- *Water Resources.* Las Vegas Creek is underground and crosses under I–11/US 95/US 93 at Main Street. Las Vegas Creek flows only briefly after rainfall and, therefore, may not be subject to sections 401 and 404 of the Clean Water Act.
- *Section 4(f) Resources.* All three Build Alternatives would result in a potential use of two recreation resources eligible for section 4(f) protection: (1) the Municipal Swimming Pool and (2) the Dula Community Center. In addition, Alternative 5 would result in the potential use of four historic resources, Alternative 6 would result in the use of two historic buildings, and Alternative 7 would result in the use of three historic buildings eligible for section 4(f) protection. Potential effects on these section 4(f) properties will be evaluated, and avoided or minimized as the project is refined during the NEPA process and section 4(f) evaluation.

The EIS will evaluate the expected impacts (including any benefits) to the resources identified above, as well as air quality, noise, hazardous and regulated materials, biological resources, community resources, and visual resources. The extent of NDOT's and FHWA's impact analysis will be commensurate with the anticipated impacts and will be governed by the statutory or regulatory requirements protecting those resources. The analyses and evaluations conducted for the EIS will identify the potential impacts and the appropriate environmental mitigation measures.

The Additional Project Information document provides additional information about the expected impacts and is available for review in the docket established for this project and on the project website as noted in the **ADDRESSES** section. FHWA welcomes comments on the expected impacts that it should analyze in the Draft EIS during the NOI comment period. NDOT's and FHWA's planned impact analysis may be revised after considering public comments.

Anticipated Permits and Other Authorizations

Potential permits and authorizations for the project are a section 402 stormwater permit from NDEP's Bureau of Water Pollution Control and concurrence from the Nevada SHPO for compliance with section 106 of the National Historic Preservation Act.

Cooperating agencies for this project are U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers. Participating agencies are the U.S. Department of Housing and Urban Development, the City of Las Vegas, Clark County, and the Southern Nevada Regional Housing Authority. NDOT and FHWA will give agencies and tribes another opportunity to serve as cooperating or participating agencies after the NOI is published.

FHWA will prepare an evaluation under section 4(f) of the USDOT Act of 1966, 49 U.S.C. 303 and 23 CFR part 774, and will undertake consultation under section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. 300101–307108, concurrently with the NEPA environmental review processes. Section 106 tribal consultation will occur separately but coordinated within the overall EIS project level tribal involvement.

Schedule for the Decision-Making Process

FHWA and NDOT will establish the project schedule as part of the requirements of the environmental review process under 23 U.S.C. 139 and will comply with 40 CFR 1501.10(a) and (b)(2), which require that the Record of Decision be issued within 2 years of the date of publication of the NOI and that all permits are issued within 90 days of the Record of Decision. A current draft of the Project Coordination Plan, the Public Involvement Plan, and the project schedule are included in the Additional Project Information document, which is available for review in the docket established for this project and on the project website as noted in the **ADDRESSES** section.

The anticipated project schedule is the following:

- NOI Publication: March 2024
- Agency Scoping: April 2024
- Cooperating and Participating Agency Review and Concurrence on Purpose and Need and Alternatives: May 2024
- Cooperating and Participating Agency Review and Concurrence on Preferred Alternative: July 2024
- Notice of Availability of the Draft EIS: June 2025
- Public Hearing: July 2025
- Section 106 consultation concludes: October 2025
- Change in Access Control approved: January 2026
- Combined Final EIS/Record of Decision: March 2026
- Notice of Final Federal Action/Statute of Limitations: April 2026
- Issue all Project Permits and Authorization Decisions: July 2026 (if a Build Alternative is selected)

A Description of the Public Scoping Process

FHWA and NDOT conducted early coordination starting in May 2020, and a pre-NOI scoping meeting was held with cooperating and participating agencies in January 2021.

The first public information meeting was held from August to September 2020 (due to the declared Covid–19 pandemic, this meeting was virtual). The purpose of this meeting was to introduce the project, provide the public an opportunity to comment on the range of issues that the study should consider, and provide the public an opportunity to ask questions.

NDOT conducted a street closure outreach campaign in March and April 2021. NDOT simulated the proposed street closures for 5 weeks and requested feedback from the public about the street closures.

An Environmental Justice survey was conducted with residents and businesses in the study area in May and June 2021 to confirm demographics of the neighborhoods and assess how often adjacent residents use the freeway.

In December 2021 and February 2022, NDOT surveyed adjacent residents and businesses regarding potential mitigation measures for the project.

A second public information meeting was held in January and February 2022 to present proposed alternatives, potential community enhancements, and preliminary environmental impacts.

In Spring 2022, EPA expressed concerns about the high number of displacements and potential impacts to low-income and minority populations resulting from the preliminary alternatives. FHWA shared these concerns. EPA and FHWA asked NDOT to revise the alternatives to reduce impacts and to solicit more community input to better understand what the community would like to see in a reconstructed freeway. In response to this feedback, NDOT embarked on a 6-month effort to further engage those most likely to be impacted by the project. During this time, the team held monthly meetings with FHWA and EPA to ensure agreement on the path forward, share progress, and receive feedback during the process.

The NDOT outreach team first opened a project office at the East Las Vegas Community Center, located near I–11/US 95/US 93 and Eastern Avenue. The team also held 15 community meetings with nearly 150 participants between August 2022 and January 2023.

Participants included residents, businesses, faith leaders, first responders, chambers of commerce, downtown stakeholders, and the Las Vegas Paiute Tribe. The conversation topics included the purpose and need for the project, challenges of living near the freeway, what type of freeway the community would like to see, and potential community enhancements. The feedback received during these community conversations influenced the project's revised purpose and need statement and aided in modifying the alternatives.

NDOT surveyed unhoused people that live near the freeway in January 2023.

A third public meeting was held in August 2023 to present revised alternatives, potential community enhancements, and preliminary environmental impacts.

The public and agencies will have the opportunity to submit written comments during the 30-day scoping comment period beginning on the date of this NOI publication to identify the scope of issues and potential significant issues related to the proposed action that the Draft EIS should address. Monthly meetings with Cooperating Agencies and periodic meetings with Participating Agencies will be held throughout the environmental review process. The Draft Public Involvement Plan and the Draft Project Coordination Plan included with the Additional Project Information document describe how the public and agencies will continue to be engaged during the EIS process. FHWA and NDOT will conduct additional public and agency outreach for the Draft EIS. The Draft EIS will be available for public and agency review and comment prior to the Draft EIS Public Hearing.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

The Additional Project Information document includes the draft statement of purpose and need, a description of the alternatives to be considered, the Project Coordination Plan and permitting timetable, the Public Involvement Plan, and a NEPA Milestone Schedule. With this NOI, FHWA and NDOT request and encourage State, tribal, and local government agencies, and the public to review the NOI and Additional Project Information document and submit comments about any aspect of the project. Specifically, agencies and the public are asked to comment on the purpose and need for the project, to identify and submit potential alternatives for consideration and information such as anticipated significant issues or environmental impacts and analyses relevant to the proposed action for consideration by the Lead and Cooperating Agencies in developing the Draft EIS. Any information presented herein, including the preliminary purpose and need, preliminary range of alternatives, and identification of impacts may be revised after the comments are considered. Comments must be received by April 22, 2024 and may be submitted using any of the methods described in the **ADDRESSES** section of this NOI. Any questions concerning this proposed action should be directed to FHWA and NDOT at the physical address, email address, or phone number provided in the **FOR FURTHER INFORMATION CONTACT** section of this NOI.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Authority: 42 U.S.C. 4321, *et seq.;* 23 CFR part 771.

Khoa Nguyen,

Division Administrator, Carson City, Nevada.

[FR Doc. 2024–06146 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Wisconsin

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies, on behalf of the Wisconsin Department of Transportation (WisDOT), that are final. The actions relate to a proposed highway project, Interstate 94 (I–94) East-West Corridor, 70th Street to 16th Street, in Milwaukee County, Wisconsin. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before August 19, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Bethaney Bacher-Gresock, Environmental Manager, FHWA Wisconsin Division, 525 Junction Road, Suite 8000, Madison, Wisconsin 53717; telephone: (608) 662–2119; email: *bethaney.bacher-gresock@dot.gov.*

For WisDOT: Mr. Christopher Zacharias, PE, Project Manager, WisDOT Southeast Region, 141 NW Barstow Street, Waukesha, Wisconsin 53187–0798; telephone: (262) 548–6716; email: *christopher.zacharias@dot.wi.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions related to the I–94 East-West Corridor Project in Milwaukee County, Wisconsin. FHWA, in cooperation with WisDOT, prepared a Supplemental Draft Environmental Impact Statement (EIS) and combined Supplemental Final EIS/Record of Decision (ROD) to reconstruct approximately 3.5 miles of I–94 from 70th Street to 16th Street in Milwaukee County, Wisconsin. The purpose of the I–94 East-West Corridor project is to address the deteriorated condition of I–94, obsolete roadway and bridge design, existing and future traffic demand, and high crash rates.

The project includes reconstructing and adding a through lane along I–94 in each direction along its existing alignment; reconstructing the 68th/70th Street interchange; reconstructing the Hawley Road interchange as a partial interchange; reconstruction of the Mitchell Boulevard interchange; reconstructing the existing system interchange at I–94/WIS 175/Brewers Boulevard (Stadium Interchange) as a diverging diamond service interchange; reconstructing the 35th Street and 27th Street interchanges; and local roadway improvements to offset impacts to local traffic from interchange modifications.

The actions taken by the Federal agencies on this project, and laws under which such actions were taken, are described in the combined Supplemental Final EIS/ROD, approved on March 8, 2024, and in other documents in the FHWA or WisDOT project records. The combined Supplemental Final EIS/ROD, and other project records are available by contacting FHWA or WisDOT at the addresses provided above. The combined Supplemental Final EIS/ROD can also be viewed on the project website at: *https://wisconsindot.gov/*

Pages/projects/by-region/se/94stadiumint/default.aspx.

This notice applies to all Federal Agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4351); Federal-Aid Highway Act (FAHA) (23 U.S.C. 109 as amended by the Fast Act section 1404(a) [Pub. L. 114–94] and 23 U.S.C. 128).

2. Air: Clean Air Act (42 U.S.C. 7401–7671(q)) (Transportation Conformity, 40 CFR part 93).

3. Noise: Procedures for Abatement of Highway Traffic Noise and Construction Noise (23 U.S.C. 109(h), 109(i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104–59, 109 Stat. 568, 605; 23 CFR part 772).

4. Land: Section 4(f) of the Department of Transportation Act of 1966 (23 U.S.C. 138 and 49 U.S.C. 303; 23 CFR part 774) and section 6(f) of the Land and Water Conservation Act as amended (54 U.S.C. 200305(f)(3), Pub. L. 88–578; 36 CFR part 59).

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108; 36 CFR part 800); Archeological and Historic Preservation Act of 1974 (54 U.S.C. 312501–312508); Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*).

6. Wildlife: Endangered Species Act of 1973 (16 U.S.C. 1531–1544 and section 1536); Fish and Wildlife Coordination Act (16 U.S.C. 661–667(e)); Migratory Bird Treaty Act (16 U.S.C. 703–712).

7. Social and Economic: Americans with Disabilities Act (42 U.S.C. 12101); Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.,* as amended by the Uniform Relocation Act Amendments of 1987 [Pub. L. 100–17]).

8. Wetlands and Water Resources: Clean Water Act (section 404, section 408, section 401, section 319) (33 U.S.C. 1251 *et seq.*); Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

9. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 *et seq.*); Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499); Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

10. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management, as amended by E.O. 12148 and E.O. 13690; E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 11514, Protection and Enhancement of Environmental Quality; E.O. 13112, Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Dated: March 8, 2024.

Glenn Fulkerson,

Division Administrator, Wisconsin Division, Federal Highway Administration.

[FR Doc. 2024–05773 Filed 3–21–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, April 10, 2024.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Wednesday, April 10, 2024, at 11 a.m. eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda includes a committee discussion involving new and old issues and starting a new TAP year.

Dated: March 18, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–06076 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, April 17, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, April 17, 2024, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include a committee discussion about new and old issues and starting out the new TAP year.

Dated: March 18, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–06075 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection for Compliance Assurance Process (CAP) Application and Associated Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 14234, Compliance Assurance Process (CAP) Application and Sub-forms (A, B, C, D, E, F).

DATES: Written comments should be received on or before May 21, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB control number 1545–2312 or Comment Request on Information Collection for Compliance Assurance Process (CAP) Application and Associated Forms.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms should be directed to Jason Schoonmaker at (801) 620–2128, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Jason.M.Schoonmaker@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Compliance Assurance Process (CAP) Application and Associated Forms.

OMB Number: 1545–2312.

Form Numbers: 14234 and sub-forms A, B, C, D, E, F.

Abstract: The Compliance Assurance Process (CAP) is strictly a voluntary program available to Large Business and International Division (LB&I) taxpayers that meet the selection criteria. CAP is a real-time review of completed business transactions during the CAP year with the goal of providing certainty of the tax return within 60 days of the filing. Taxpayers in CAP are required to be cooperative and transparent and report all material issues and items related to completed business transactions to the review team.

Current Actions: There are two new forms being added to the Information Collection Request. Form 14234–E, Compliance Assurance Process (CAP) Cross Border Activities Questionnaire (CBAQ), is used by the IRS for risk assessment purposes to review a taxpayer's material cross border activities transactions (other than transfer pricing) in the CAP year. Form 14234–F Post-Filing Representation by Taxpayer requires that the corporate officer, authorized to sign the tax return of the CAP taxpayer, attest that all material issues from the pre-filing review have been disclosed and resolved, and all resolved issues are reported as agreed on the company's tax return.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses.

Estimated Number of Respondents: 125.

Estimated Number of Responses: 875.

Estimated Time per Response: 5.35 hours.

Estimated Total Annual Burden Hours: 4,680 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (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 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.

Approved: March 18, 2024.

Jason M. Schoonmaker,

Tax Analyst.

[FR Doc. 2024–06057 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Thursday, April 11, 2024, at 4:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information, please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda includes a committee discussion new and old issues and starting the new TAP year.

Dated: March 18, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–06079 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Ann Tabat at 1–888–912–1227 or (602) 636–9143.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Thursday, April 11, 2024, at 2:30 p.m. eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ann Tabat. For more information, please contact Ann Tabat at 1–888–912–1227 or (602) 636–9143, or write TAP Office, 4041 N Central Ave., Phoenix, AZ 85012 or contact us at the website: *http://www.improveirs.org*. The agenda will include new and old referrals and starting the new TAP year.

Dated: March 18, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–06074 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Jose Cintron-Santiago at 1–888–912–1227 or 787–522–8607.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, April 11, 2024, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Jose Cintron-Santiago. For more information, please contact Jose Cintron-Santiago at 1–888–912–1227 or 787–522–8607, or write TAP Office, 48 Carr 165, Suite 2000, Guaynabo, PR 00968–8000 or contact us at the website: *http://www.improveirs.org.* The agenda includes a committee discussion involving new and old issues and starting the new TAP year.

Dated: March 18, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–06078 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, April 9, 2024.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements (TAC) Project Committee will be held Tuesday, April 9, 2024, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda includes new and old issues to start out the new TAP year.

Dated: March 18, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–06077 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0688]

Agency Information Collection Activity: Veterans Affairs Acquisition Regulation (VAAR) 832.202–4, Security for Government Financing

AGENCY: Procurement Policy and Warrant Management Service, Office of Procurement Policy, Systems and Oversight, Office of Acquisition and Logistics (OAL), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Office of Acquisition and Logistics, 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, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before *May 21, 2024.*

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Forrest R. Browne, Senior Procurement Analyst; Procurement Policy Service (PPS; 003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Forrest.Browne@va.gov.* Please refer to ''OMB Control No. 2900–0688'' 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), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0688'' 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, OAL invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of OAL's functions, including whether the information will have practical utility; (2) the accuracy of OAL'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: Veterans Affairs Acquisition Regulation (VAAR) 832.202–4, Security for Government Financing.

OMB Control Number: 2900–0688.

Type of Review: Revision of a currently approved collection.

Abstract: Performance of the VA mission may require VA to provide advance payments to contractors. To comply with 41 U.S.C. 4505 requiring the Government to obtain adequate security for Government financing, VA Acquisition Regulation (VAAR) 832.202–4, Security for Government Financing specifies the type of information that the contracting officer may obtain to determine whether or not the offeror's financial condition constitutes adequate security. The information that is gathered under 832.202–4 will be used by the VA contracting officer to assess whether or not the contractor's overall financial condition represents adequate security to warrant paying the contractor in advance.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 424 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: 1 per each solicitation.

Estimated Number of Respondents: 847.

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. 2024–06090 Filed 3–21–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0091]

Agency Information Collection Activity: VA Health Benefits: Application, Update, Hardship Determination

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), 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, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Grant Bennett, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Grant.Bennett@va.gov.* Please refer to ''OMB Control No. 2900–0091'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Dorothy Glasgow, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–1084 or email *dorothy.glasgow@va.gov.* Please refer to ''OMB Control No. 2900–0091'' 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, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: VA Health Benefits: Application, Update, Hardship Determination (VA Forms 10–10EZ, 10–10EZR and 10–10HS).

OMB Control Number: 2900–0091.

Type of Review: Revision of a currently approved collection.

Abstract: Title 38 U.S.C. chapter 17 authorizes VA to provide hospital care, medical services, domiciliary care, and nursing home care to eligible Veterans. Title 38 U.S.C. 1705 requires VA to design, establish, and operate a system of annual patient enrollment in accordance with a series of stipulated priorities. Title 38 U.S.C. 1722 establishes eligibility assessment procedures for cost-free VA medical care, based on income levels, which determines whether nonservice-connected and 0% service-connected non-compensable Veterans are able to defray the necessary expenses of care for nonservice-connected conditions. Further, when the Veteran projects that their attributable income for the current calendar year would be substantially below the applicable income thresholds, the Veteran would be considered unable

to defray the expenses of care and VA may exempt the Veteran from the requirement to pay copayments for hospital or outpatient care. In addition, section 103 of Public Law 117–168, titled the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022, amended title 38 U.S.C. 1710(e)(3) by expanding the health care eligibility benefit for Veterans who participated in a toxic exposure risk activity (TERA) while serving on active duty, active duty for training, or inactive duty training.

This collection of information is required to properly administer health benefits to eligible Veterans.

a. VA Form 10–10EZ, Application for Health Benefits, is used to collect Veteran information during the initial application process for VA medical care, nursing home, domiciliary, dental benefits, etc. Updates were made to this form pursuant to section 103 of the PACT Act to collect additional information in the Military Service section for the expanded TERA health care eligibility benefit. Corresponding changes were made to the Instructions and Definitions sections.

b. VA Form 10–10EZR, Health Benefits Update Form, is used to update a Veteran's personal information, such as marital status, address, health insurance and financial information, for renewal of health benefits. Updates were made to this form pursuant to section 103 of the PACT Act to collect additional information in the Military Service section for the expanded TERA health care eligibility benefit. Corresponding changes were made to the Instructions and Definitions sections.

c. VA Form 10–10HS, Request for Hardship Determination, is used to collect information from Veterans who are in a copay required status for hospital care and medical services, but due to a loss of income project their income for the current year will be substantially below the VA means test limits. No updates were made to this form.

These forms collect information to enroll a Veteran for health benefits, establish basic eligibility, determine TERA benefit eligibility, identify 3rd party health insurance coverage, identify prescription copayment, provide for income verification, and serve as a mechanism to make changes upon admission for benefits or yearly financial updates.

Total Annual Burden: 703,300 hours.

Total Annual Responses: 1,406,000.

VA Form 10–10EZ

Affected Public: Individuals and households.

Estimated Annual Burden: 315,000 hours.

Estimated Average Burden per Respondent: 35 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 540,000.

VA Form 10–10EZR

Affected Public: Individuals and households.

Estimated Annual Burden: 386,550 hours.

Estimated Average Burden per Respondent: 27 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 859,000.

VA Form 10–10HS

Affected Public: Individuals and households.

Estimated Annual Burden: 1,750 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 7,000.

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. 2024–06065 Filed 3–21–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Revised VA Tribal Consultation Policy and Directive 8603

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) Office of Public and Intergovernmental Affairs (OPIA), Office of Tribal Government Relations (OTGR), has updated their policy and directive on VA Tribal Consultation, in accordance with Executive Order 13175 and Presidential Memorandum January 2021. We request that tribal leaders or their designees review the final directive/policy and provide any additional feedback.

DATES: Comments must be received on or before April 22, 2024.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

FOR FURTHER INFORMATION CONTACT: Veronica Duncan, Tribal Relations Specialist, 202–461–7431, 810 Vermont Avenue NW, Washington, DC 20420. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA has gathered tribal input on the policy through a March 2021 Dear Tribal Leader Letter requesting written comments, a series of six tribal consultation meetings held in April 2021, and a review of the policy by VA's Advisory Committee on Tribal and Indian Affairs. VA has reviewed all input received through this engagement and proposes several edits to the Tribal Consultation Policy in response to the tribal recommendations deemed feasible to implement. VA Directive 8603 on Consultation and Communication with Federally Recognized Indian Tribes can be found at: *www.va.gov/vapubs/search_action.cfm?dType=1.*

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on March 18, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–06055 Filed 3–21–24; 8:45 am]

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